
DUBLIN - CCWG-Accountability Face to Face Meeting
Friday, October 16, 2015 - 08:00 to 18:00 (Morning Session)
ICANN54 | Dublin, Ireland

LEON SANCHEZ: Okay. So good morning, everyone. Can we have the recording started?

Okay. So it's started.

Good morning, everyone, and welcome to the CCWG face-to-face meeting in Dublin where we'll be, of course, having the roll call with those attending the AC room, and if there is anyone on the phone bridge that is not in the AC room, can you please state your name at this point so we can add you to the roll call.

Okay. So we seem to be having problems getting into the room. Okay. So we'll ask staff and I.T. to please have a look at connection issues in the AC room because there are many who are, indeed, in this room that are not being able to access the virtual Adobe Connect room. I see that Becky is in that situation, also Sebastien Bachollet is in that situation, and a lot of -- Alan is too in that situation, so there are many people that are actually trying to get into the Adobe Connect room and are not being able to do so.

So please give us a hand with that.

JOSH BAULCH: If you guys will notice, the URL for this particular meeting is actually different. It's not icann.adobeconnect, so you'll see that it's meet16733133, a wonderful easy URL to remember.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

It is actually for -- just for this particular session that we had to change the URL due to capacity, so that we could accommodate more than a hundred people in the Adobe Connect.

So this will be -- every time you guys are in this particular room, this will be the URL.

So I do apologize. I know that's confusing.

LEON SANCHEZ:

Okay. So just please make sure that you're trying to access the correct URL for this meeting room.

And, yes, you can see it on your screens.

Okay. So we have a full day of work today ahead, and it is important for us -- or for everyone who speaks to please state their name before speaking, for transcript records and of course for those who are joining us remotely to identify everyone on the Adobe Connect room, and, well, the usual rules for these meetings.

Remember that we have -- we don't want to use a timer but we do have one and we are willing to use it anytime.

So please keep your interventions concise, one subject per intervention, and of course please do observe the rules of behavior either on the Adobe Connect room or here in the room. That is something important for us. We've been always polite to everyone, so let's keep it that way.

And I would like now to turn to my co-chair, Mathieu, for an important message.

MATHIEU WEILL:

Thank you very much, Leon.

Mathieu Weill. I'm the ccNSO appointed co-chair.

Welcome, everyone. I don't know what this says about me but I'm actually pleased to see a number of you face-to-face.

[Laughter]

It does mean a lot about my life, I guess.

We are ahead of not only an important day of work but a full week. Very, very full week. And I've been speaking in this group about turning points in the past, and I think that might be another one, so -- and at least I hope we are all in this period of turning this in a positive manner so that at the end of this week we are happy with the way we've used this significant amount of our time and of our resources.

And obviously, lately I think there's been a lot of traffic on the email list, but also outside of our group, and I would paraphrase a famous -- I think it's British -- character saying that the rumors of our failure were greatly exaggerated.

>>

Yet.

MATHIEU WEILL:

Yet. Thank you. Thank you for asking -- for adding this.

If you look at the scorecard that we've been updating based on the public comments we have received, we're not in red.

There is a bit of red, but there's also green, there's a lot of things to refine, but there's a lot of common ground.

And this is the product of what we've achieved through our work being thorough, fact-based, requirement-based, and listening to the public comments so far.

We've had a first round, we've listened, we've adjusted. And now we've had a second round. We've listened. Now comes the time to decide where we're going from there.

And I think that's a very important aspect of our meetings this week, that we base our work on the public comments, on the statements that are on the record, not on the noise that's taking place outside.

And we also need to remind ourselves what kind -- what type of achievement we've had.

We have significant support in the public comments on very substantial enhancements, on very substantial proposals, and in itself, in a consensus, bottom-up, multistakeholder world, that is already quite an achievement that we need to be proud of and that we need to build on because it's an achievement and it's an asset that we need to keep in mind when we move through this week.

But very soon, maybe tonight, maybe tomorrow, we'll know. We'll know whether this week we are -- whether we have reached another turning point or whether we're in danger of facing the gridlock, which is definitely what we need to -- what we need to avoid.

I'm sure you're all convinced of that. I just wanted to reaffirm the importance of this meeting and the responsibility that we share with this, just in case you were not aware, and just adding a little bit of pressure in the room so that everyone's focused.

And I'm seeing -- I'm not seeing that many smiles now. That's good.

So we've prepared a very busy agenda for the day. It's based on the -- off the understanding and analysis of the outstanding work that's been conducted in the last few weeks by the work party volunteers and rapporteurs. They really did an outstanding job at looking at the 90-plus comments, some of them more than 80 pages long, but quality, quantity obviously are not what matters. We went through all these comments and treated them fairly, and that's to the credit of the volunteers that committed their time to this exercise in a fact-based approach, and I think that's one of the key assets from this process.

So with all the traffic and the analysis taking place, we read all this, and basically our -- we were figuring out how to approach this. And the conclusion we drew was that currently there are too many moving parts in the proposals, too many options still being considered, for us to be able to finalize some key aspects. Dependencies are everywhere. Of course in an accountability framework you have dependencies. Everything depends on everything. So we cannot provide some of the refinements until we've set some of the basic principles of the process. We cannot clarify the process, how we go to the last-resort mechanisms, until we've defined some of the basic rules.

So we are suggesting an approach today where we will focus first on the most contentious and open issues that are the founding bricks for the accountability framework, and we want to clarify a way forward on this. "A way forward" meaning something that we will use as the basis of our investigations to then flesh out and refine the other aspects and then take a step back -- we can step back and look at whether the whole picture

is consistent enough, is solid, meets all the requirements and the criteria and so on and so forth.

So we want to limit the number of the moving parts as far as the key bricks of the accountability frameworks are concerned, and so we'll start with basically the most contentious issues.

In the scorecard, we'll go from red to green. That's our approach. And most of the morning is going to be devoted to the most contentious issues: The decision-making -- I have this here; it's also on my screen so that's better for my neck -- the decision-making mechanisms; the implementation model discussions; the board director removal power; and the budget.

And we also -- and then obviously we'll have lunch in the middle.

But that's our approach. And then we'll go through the others. And we'll go -- for the yellow, green ticks part of the scorecard, we will try and use an approach of: Present, discuss, and either confirm or defer. So it's, what, present -- PDD or PDC or whatever. We'd like to add another set of acronyms, if that's possible.

So for the refinement aspects, either we have agreement and some form of consensus and we put it on the list for first reading kind of agreement or we defer to working group further work and we have breakout sessions tomorrow. So that's something we're going to use a lot in the afternoon where you see the slots are smaller.

But this morning, we want to tackle the big issues and we want a way forward, which means that we use a particular option as the reference model, as the reference option, so that we can finalize the others.

In terms of approach, obviously at the end of the day our hope is that when you look at the scorecard as a whole, where there's some green, some red, well, I hope that because we are in Ireland it's going to be all green. Maybe not all green, but at least the green, it's going to be greener, and then at the next session greener and then -- and so on until the end of the week.

So that's our hope, and with that, I'm not sure whether there are any questions yet, so I'm turning to Thomas.

THOMAS RICKERT: Thank you. Good morning, everyone. This is Thomas Rickert, the GNSO appointed co-chair.

And while staff is bringing up a few slides, let me just say that I'm quite disappointed partially with the support that we're getting from ICANN these days. I spoke to Theresa the other day. She said, "Do you need anything for this meeting," and I said, "I want a 20-piece big band to entertain us during our coffee breaks."

Do you see it here?

>> No.

THOMAS RICKERT: You don't, so -- but joking aside, we've spoken a lot and applauded the community for what they've done, but I just wanted to emphasize that we would be lost without the excellent staff that we have to support us, so let's just give them a round of applause.

[Applause]

Okay. So the way that we're going to go about with this has been outlined by Mathieu already.

We're going to start each of these discussions with a quick rapporteur report on the public comment analysis and the options that the sub-teams came up with to address the concerns voiced by the community, but we've also asked the rapporteurs to specify an option that in their assessment of the community feedback could be an option for the group to move forward, and we're then going to seek support from the group for these approaches.

But let's take a step back for the moment and look at what we really need to do.

This is not the time to come up with entirely new concepts, with entirely new ideas that everyone needs to digest and needs to fully analyze that need legal memos and stuff like that.

So let's build as much as we can on what we have. Our work products have undergone an evolution. We've walked forward, then we've walked back a little bit, and then we refined. So let's see this as an evolutionary process, so ideally, we would not come out of this meeting with an entirely new set of ideas, but we would just take the evolution of our recommendations to the next level.

And while doing so, let's try to remove as many concerns as we heard from the community as possible, while checking that when we remove concerns, when we tweak, we still meet the requirements that we agreed on way back in Frankfurt.

So that's essential, and let's keep that in mind, because there is a linkage between what we're doing here and the time we need

to deliver, so the more familiar our group and the community is with what we did, the easier it will be for the community to buy into the refinements that we agreed on.

Next slide, please.

When we're talking about community empowerment, I call this the triple E approach. This is obvious to everyone, but let's just refresh our memories on that, because we're -- there's been a lot of talk about the third area, the enforcement area of the community powers, while we have two more phases, and I think we've failed to make sufficiently clear in our report that we're going to strengthen and make part of the game what I've called the engagement phase.

So the second phase, the escalation phase, this is what we've discussed, but people thought that we would jump to escalation immediately whenever we do something, which is far from correct.

So we're going to have an engagement phase first on the budget, on other areas, between the community and the board, and the better that works, the less the risk that we need to go to the escalation phase. I.e., discussing the community powers. And the better we are in those two areas, the lesser the risk that we will ever need enforceability.

Next slide, please.

So let's keep these three distinct.

And also, I think what we should bear in mind is that we need to fulfill key features, and they have been themes that came up over and over again from all areas of the community.

We need to come up with a concept that avoids capture, that avoids concentration or the reallocation of power, we need the system to be inclusive -- which is sort of mirroring the concentration of power part; if you're not inclusive, you're concentrating power somewhere, so we need to be more inclusive than we were thinking earlier and we need to be efficient. We need to make our recommendations workable, implementable. They need to hold water in ICANN's day-to-day operations. And again, this is just a reminder in bold that the better we are in phases 1 and 2, the less the risk that we will ever need that. If we bake in these four principles into the first two phases, I think we will have less friction or less -- less divergence on the third area, the enforcement area.

So that is just to set the scene. I'd now like to invite Jordan Carter to the table. He's the unfortunate guy that's now going to have a Herculean task of guiding us through the outcome of WP1. And most of the contentious areas are actually in WP1. So thanks, Jordan, thanks so much for all your hard work and your team that I think has been outstanding and we're looking forward to your report now.

JORDAN CARTER:

It's all been really easy. Good morning, everyone. Jordan Carter .NZ and the rapporteur for Work Party 1 on community empowerment. I hope you're feeling empowered. The first topic on the agenda is the -- I've forgotten the name of it as it is on the agenda. The decision-making mechanisms. And I'll take you through a brief scan of the public comments and then make a couple of other comments before we open up the discussion, which Thomas is going to chair.

In the PC tool, the helpful one that the staff did, there were some comments in the model tab on the sole member model and one of the points made from the comments, there's a lack of consensus on the voting allocations and composition of the community within the model, e.g., the role of advisory committees. And in the voting/forum tab, voting slash forum, the next one, 39 of the 92 public comments exactly and specifically addressed this question of how we make decisions. Only 13 of those were in support, 11 were in disagreement, 12 had new ideas, 7 had concerns, and 2 were neutral. And so, you know, as people analyze this -- and I want to thank Avri and Robin who did the -- the work in pulling this together -- if you go to page 24 of this paper that's flying past you on the screen, yeah, so in the second tab in the areas needing clarification or refinement, there's this point that there must be a minimum number of SOs and ACs participating. So people were worried about participation, making sure that a small subset of the ICANN community doesn't start exercising these powers. And then flowing over page 24 onto 25 in the areas of concern and divergence, I draw your attention to three of the statements made there. There's a lack of consensus on whether communities should take decisions through formal voting or through establishing consensus. There's a lack of consensus on the voting allocation between the SOs and ACs. Comments were concerned about a range of things, dilution of authority of the SO community, some support in favor of the same allocations of authority and influences there are in the allocations to the ICANN board, and there were some concerns about dualities, the tagline, that second paragraph on this page, in terms of dual roles for the GAC. And so that -- that piece, the comments on this decision-making mechanism were part of the broader thing.

We didn't split them out, the broader comments on the mechanism.

And so I just want to wrap up with a couple of other points. We know that voting happens today in ICANN. A lot of the SOs and ACs do come to decisions through a consensus discussion and then they kind of rubber stamp it with a voting at the end to make sure their decisions are clear. And that was what we had in mind with the second draft proposal, that there was going to be -- whatever process, each SO and AC used to come to its decision and then it would rubber stamp it. And if you remember the only reason we allocated votes to people within the community mechanism, there were two reasons. One was that we wanted to distinguish between some SOs and ACs and others. So it was a question of relative influence. If you want to have different weights of decision-making authority, you have to have some way to distinguish. And the other one was to say to each SO and AC, you don't have to be yes or no. It doesn't have to be a binary choice for you, whether you support the exercise of this power. If you have diversity within your participants, you can reflect that diversity into the decisions that are being made.

Now, at the Los Angeles meeting one of the constructive things that happened was the breakout sessions on decision-making and the community. And I might, if you think it's useful, Thomas, get Steve to give a report back on -- is it Steve or Jonathan? Jonathan to give a report back on how that went. But if there's a view that consensus rather than decisional voting is the way to go, there's been a discussion about how that can work. And personally, I don't have a view either way. I'm supportive of us exploring the consensus model because it can head off some of the concerns that were raised in the -- in the -- in the public comments. And the challenge -- whatever the

decisional thing is to make these powers hard to exercise because they only happen after a consultation engagement process has not worked and after kind of dialogue and reconciliation hasn't worked and after the true -- the start of a discussion about using these powers hasn't worked. So these are all last-resort backstops. But they have to be able to be used. So you need to make them hard to use but not too hard to use, and that applies whether it's consensus based or voting based. So I think, Thomas, that's kind of the flavor, again to summarize. There are concerns with the mechanism, with the weights between people. There was a useful discussion in LA about maybe shifting to a different model, and we think we should be up with that. WP1 doesn't have a recommendation on it because we didn't get that far through, but that's my intro to the topic.

THOMAS RICKERT:

Thanks very much, Jordan. And we were actually thinking of reviving Jonathan Zuck in his capacity as rapporteur of the breakout sessions on decision-making. So Jonathan, would you like to speak to this a little bit? You can come to the table, if you would like to.

JONATHAN ZUCK:

Good morning. I'm married. That's my -- that's my news.

[Applause]

And I -- I can express no better dedication to this process than being here while my new bride is back in the hotel, you know, making -- having vacation in Dublin while we're doing this. Okay.

[Laughter]

What a way to begin a new marriage, right? So what we did in Los Angeles is we had a series of breakout discussions where folks got together in small groups to just kind of brainstorm about what a community activation mechanism consensus building mechanism might look like. Because it's -- it seemed important to flesh that out a little bit so it didn't feel like some light switch you could throw on in a whim which makes the whole process seem less approachable.

And so I put together just a couple of slides. The first was to provide a little bit of context, right? And so for lack of a better term I call this the accountability timeline. So if you look at it, there's these different phases that happen. And pardon the late night graphics, if they do more harm than good.

So the first, I called it consensus position development. I wanted to say policy, but that's a term of art at ICANN. But it's, you know, what's the position. And so this is sort of the status quo. These are the processes that we have in place now for consultations, for policy development, et cetera, that -- whether it's budget development, bylaw changes, review team recommendations, et cetera. The processes that ultimately lead to some type of board action, right? So those are the processes that exist today. And those processes exist in an environment of continuous improvement, right? So, for example, the ATRT1 made a recommendation that we should have a reply period for public comments because they thought it would lead to more debate between the commenters. And for a number of reasons, that didn't work, and that's being rolled back. But that was an experiment in this upfront process of position development, again for lack of a better term.

So then the next phase, if you will, is the Board resolution. The codification of this, the justification for the decision made by the Board. These are elements of transparency, et cetera. And again, this is somewhat of the status quo but something we're talking about a little bit in this process.

Then the next phase of this that's more optional, if you will, is the community objection process. So that's what's new, right? So that we've gone through the consensus-based position development and the Board has, you know, come out with an ultimate resolution to that position development, if you will, and justified it. And now the community wants to take issue with that. So there's going to be an objection by some individual, and I'm going to talk about this more in the next slide, some consensus building, and then ultimately presentation of that consensus back to the Board.

And then the last part of this is the arbitration or enforcement component of this accountability timeline. So at the very tail end of this, if the first three arrows, right? The reason I did the arrows that way is that ideally, the very first arrow would just go straight through. That's the normal process. You would make it all the way to implementation at each of these levels. But you bring in the arbitration enforcement at the very end if you have an issue and the Board and the community are sort of are at loggerheads and that's when you bring up reconsideration, IRP, or some form of arbitration, whether it's with an arbitrator or in court, it's still some type of arbitration, right?

So that's sort of the final phase, if you will, of this overall timeline. And the reason I wanted to show this is it's a very long timeline. And then if you go to the next -- oh -- so if you click here, this area I've circled is really what has been the focus of

Work Stream 1's work. And it's -- it's really kind of a fuzzy line, a dotted line, et cetera. But the objective here wasn't to go back and revisit the consensus position development processes as part of Work Stream 1. There was a recognition, whether you want to call it Work Stream 2, 3, 4, or simply continuous improvement there was a recognition that there would be more development at all phases, you know, in the immediate future and indefinitely, that these processes would be continually improved. So this process has peeked a little bit into the Board resolution process in that there are some requirements for justification of decisions and some additional transparency, but for the most part this process that we've been engaged in has -- on this timeline begins at the point at which the Board's made a decision with which the community disagrees.

And I think this is important because as we go through the comments, there's a lot of comments that would say, wouldn't it be nice if instead we had this better process for getting to the Board's resolution in the first place? And I think that's there's broad consensus about that as well. That would be nice. And I think we'll be working on that, you know, for the foreseeable future, to improve those processes in which the community is engaged in the position development process. And there's already improvements, et cetera. Okay? So what we're focused on in this, because of the limited timing and the limited requirements of Work Stream 1, we're -- we are focused on just the point at which there's a disagreement.

So then go to the next slide, please. Click. Is this the -- to give me a sense of what it's like to be married?

[Laughter]

>> (Off microphone).

JONATHAN ZUCK:

Okay. So the next slide, if you could see it, is an attempt to bring together the results of those subgroups in LA and to talk about a process that seemed to kind of percolate out of that. And it's a multi-step process. And so as you can see in this very small slide right here --

[Laughter]

-- I very carefully made it like a staircase because it's a method of escalation that happens over time. And I think that's an important part of this discussion as well, is that there's a very involved process of ultimately coming back to the Board and saying no. It's not something that's done in a whimsical way. But instead there's an engaged process. Can you just click on the slide below and not even put it into --

>> (Off microphone).

JONATHAN ZUCK:

Okay. All right. I didn't -- okay. So the idea here, in the first phase there's an individual, it can be any individual, who objects to the decision made by the Board. Okay? That person then needs to go to the SO or AC that best represents them and convinces them that that SO or AC should object in turn. And whatever the mechanism will be for that SO or AC to object will be up to that SO or AC, right? However they form their own consensus within the SO or AC is up to them. But that's the job of the individual so to get them on board.

The next phase is a kind of a huddle or a call, right? Just to level set and see, is there enough interest in this topic that we should proceed to a broader community engagement to decide whether or not to proceed to a community objection. And so what came out of the -- what came out of it is there should be a minimum of two SOs or ACs that agree this process should move forward or escalate. Right? On the staircase -- I'll sit back down since I don't have a slide to point to anymore.

>> (Off microphone) this is death by PowerPoint.

JONATHAN ZUCK: Yes, exactly. So the next step of this, the next process, if you will, would be to have a community forum and have a very broad conversation which everyone's invited and all voices are heard, to determine whether or not there's some broad consensus around this objection to the Board's decision or the organization's decision. And from that discussion the so-called community council, if you will, right, will sit together and decide whether or not to move forward that objection, based on the input from that community forum, right? So I think the objective would be to use like a ccNSO style consensus process where, you know, no more than one, no more than two objections. But maybe there's an option for a vote, if the people that are trying to advance the objection and there isn't ability to reach consensus, there might be a vote, and that's a conversation we could still have, within that community council. Because that's what, as Jordan said, might allow for a particular SO or AC to split their position and then see if there's enough of a majority view as a result. And only if it then gets through that process is there then a presented objection to the Board that says, here,

we really disagree and want you to roll back. And here's the alternative language that we recommend.

So that entire process would happen before any of the other things that we talk about that we're calling enforcement, right? In that last arrow. Because we'd only go to that next phase if the Board said, I'm sorry, I feel strongly -- we feel strongly about this. We know you -- we know you've reached consensus about this but for reasons that we outline here, et cetera, we still think we're right. And that's when things might go into a more what we'd call the enforcement phase. And it's only at that point that the model and everything that we've been discussing so much would even come into play. Everything prior to that doesn't have anything to do with the models we've been discussing for enforcement and it's only then. And then it's, how do we resolve that dispute between the community and the Board or the community and the organization. And that's -- that's the essence of the enforcement discussion. So there's a great deal of escalation and different, you know -- I think it was a little bit like a staircase. You know, you get to each landing, right, and take another level set to see where we are. And it's only if we reach to the top floor that we even begin the process that we're calling enforcement.

So that was the purpose behind that second slide. And I think that that was sort of the purpose behind the subgroups in LA, was to realize there was, in fact, a great deal of common understanding about what that escalation process should look like and that it would be fairly comprehensive, fairly inclusive and least likely to be captured by any particular group or overly concentrate power in a small subset of the community. So that's -- that's basically all that I wanted to share from the meetings in LA.

THOMAS RICKERT: That's great, Jonathan. And if you could stay with us for a moment. Thanks so much. Since we don't have any visual support at this stage, let us briefly try to recap the phases so everyone is clear on that. So the first phase would be the petition phase.

JONATHAN ZUCK: Yes, individual -- an individual petitioner would go to their SO or AC and convince them that they should, as an organization, support an objection -- a community objection.

THOMAS RICKERT: And the next phase would be?

JONATHAN ZUCK: The next phase would be kind of a huddle or call.

>> (Off microphone.)

JONATHAN ZUCK: Oh, it is. Okay. So it would be kind of a huddle or call. And on that, it's just, again, a kind of a level set. In other words, is this group now all out by itself? If it is, then the process dies right there; right? But if there are at least two SOs or ACs that agree that this should go to a community discussion -- and that's all they're agreeing on, is should this move forward, should this escalate up to the next landing of the staircase; right? -- then it moves forward, at which case a community forum is organized and there's a general debate and discussion about this objection, and everyone is invited to this and everyone is

encouraged to attend, and everyone is encouraged not to abstain because this is the discussion; right? It's about getting everyone's input and understanding.

And it's probably a physical gathering with staff support; right? This is a big deal.

And then after that, the SOs/ACs, or what we're calling the community council, are going to get together, then, and on the basis of that input try to form consensus about whether to move forward with a community objection. And it's only then, if there's a community objection that's presented formally to the Board, at which point the Board may say, okay. Because sometimes what we hear on the list is, well, the community -- you know, we're having to decide between conflicting interest in the community, et cetera, and I think that's true. So if there was community consensus and a community-presented objection, it's very possible and even probable the Board would, in fact, change its decision.

If it didn't, that very last phase, that next phase, is then engaging in the enforcement mechanisms we've been discussing.

THOMAS RICKERT:

Great. Thanks so much for that clarification. And for all those who are staring at this behind me, you can find the slide in the Adobe room now. So we don't yet have it in the room, but for the benefit of the remote participants as well as for those using computers here, you can see it there.

Just for clarification purpose, I would suggest that we might clarify for the second phase, which you call pre-call, that this is actually the formal petition stage.

You know, so should an individual who has raised an objection find their S.O. or A.C., which is their home, basically, to support the objection, then we would enter this phase. This would be going into the community forum.

JONATHAN ZUCK: That's right. So if you're now active, if you keep clicking on this slide, you will see there's some detail below each of these steps.

THOMAS RICKERT: Great. And also, I think it's important to note that the way that I took it away from L.A. is that for the community forum, that is as inclusive as can be. So everyone can be heard there. All views, regardless of whether people are in SOs or ACs, whether they are inside the core ICANN ecosystem or beyond, can be heard. So this is the inclusive part.

Then when it comes to decision-making, we would ideally do a consensus call and establish consensus, and I think it is up to the sub-team now to define some caveats and refine a definition of what is consensus. Because if we're asking for unanimity, then we will never be able to exercise community powers.

So depending upon the community power concerned, I think we should have a combination of consensus amongst all the community. So everyone can chime in, be they legal person -- personalities or not. Everyone can make themselves heard.

But then we would look at who's against this community consensus. And then I think we would need to define levels of opposition or veto, or whatever you might call it, from different groups inside the ICANN arena, and then say, okay, consensus is absent because too many groups object.

And what we'd like to do now with you is confirm this approach. So we're not enshrining any opposition level or take stock on that, but let us please try to agree on this methodology as a basis for community decision-making. Let's move away from the concept of voting. It has done so much harm. There might be voting components somewhere down the line in determining the presence or absence of consensus, but I think what we're trying to do is avoid concentration of power, avoid the reallocation of power, be inclusive, and make it work.

So let's try to let us guide by these principles.

And there's a queue forming, and let me just encourage everyone to be as brief as you can. Try not to be repetitive to what your predecessor speaker said. It doesn't do any harm to pass even if you've raised your hand. There's no punishment for that.

First one in the queue is Jonathan. And as I'm conscious of time, let us try -- let's see what the commenters say and provisionally close the queue after Kavouss. See where we are, and see whether we should further engage in the discussion or whether we are okay to take it to the sub-team, because I think we're not going to reach a final result on this anyway this morning. That wasn't the plan. But we would like to agree on some principles.

So first in line is Jonathan.

JONATHAN ROBINSON: Thanks, Thomas. It's Jonathan Robinson. I haven't tracked the detail of this group quite at this level. I haven't been in many of the meetings and so on, so I may be asking a naive or ignorant question. But to that extent, Jonathan Zuck's presentation was

very helpful. Taking us through that staircase is very, very useful. It crystallized what is envisaged.

What I would like to think of, though, and I ask this as a clarification question, assuming a GNSO-developed policy came through the GNSO in the normal way, was recommended to the Board, the Board took it on Board in the normal way and voted to accept that, it's then possible that this kind of mechanism could then kick in. Is that right? Could it effect -- be because that's -- and so that's why I thought it may be -- what are the kind of topics that would be -- what would be an example?

I see Jordan shakes his head. So I'd just like to understand whether this is a mechanism by which that kind of policy could be objected to or is it other types of decisions?

So that's the question. Thanks.

JORDAN CARTER:

This is one of those occasions when the Skype back channel has completely let me down.

The reason I was shaking my head was that the subject matter of the example that Jonathan gave isn't subject to the five sets of powers that we've talked about. So that's why I was shaking my head. To the extent this staircase that's in front of us is a process that's designed to explore differences and resolve them before you even get to one of the community powers, then, yes, it is something that could be subject to this discussion.

So, Jonathan, you might want to expand on that distinction that I'm making.

JONATHAN ZUCK: Yeah, I guess -- and this isn't something -- I think it's a good question and not one that we've dealt with, you know, in detail before. But I think that this process could get triggered or engaged in if other members of the community had objection to that policy. And so it is something that -- for which that conversation could happen prior to any enforcement-style mechanism.

THOMAS RICKERT: So let me just jump in quickly.

Jonathan, you will remember that when we had these visualizations of the exercising of community powers, we had three phases in there: Petition, discussion, decision. And the decision phase was a voting-based decision-making. What we're trying to do here is establish a process that is not voting but that still allows for the community to make decisions.

And this is a refinement of the petition decision -- petition discussion decision approach. Just a little bit more fleshed out. And it is exclusively reserved to exercising the community powers, for nothing else. This is just the community powers. Let's not be confused.

>> So it's not for GNSO or any other S.O.-based policy at all. It is for budget, strategy, bylaw changes, and Board removal/recall. End of story.

JONATHAN ROBINSON: Thank you. That's very helpful to be a reminder. I was very clear on the mechanics, and the mechanics were articulated very well.

For me the question was one of scope, and you've answered that. That's helpful. Thank you.

THOMAS RICKERT: Jorge.

JORGE CANCIO: Hello, good morning. Jorge Cancio for the record.

I will be very brief. I think I stated sometimes in our discussions that we agree very much with the idea of consensus, or new consensus. Consensus is not only a result. It's both the process and the result. A process of discussion and of consensus building. That's why we have also been very eager to participate in refining the community forum because we think that's a key place for building consensus and having the opportunity as a process to have a discussion where everybody can participate and taking into account how the different parts of the community have different ways of expressing their views, and consensus is also a level of support. It's not only a lack of objections, but it's a required level of support.

And if we are talking about community powers, they have to be exercised by something, by somebody who really is representing a large majority of the community. So it must be a positive support of the whole community or almost the whole of it. Otherwise, we have the danger, and sometimes we've seen it here and in other places that fractions of the community which are especially good organized or especially activist can capture the process.

So we have to be very careful and define consensus not only as a process, which is very important, but as a level of support for the

decisions which really represents the whole community or almost the whole of it.

Thank you.

THOMAS RICKERT: Jorge, a quick follow-up question. We will have this phase where consensus is to be determined; right? So my question to you would be I think we should task the sub-team to work on assessing whether there's sufficient support when they do the consensus call, but apart from that, are you okay with this methodology?

For those who are not in the room, he is nodding. I'd say that for a Swiss, he is --

>> He's nodding for the record.

THOMAS RICKERT: -- violently nodding.

So we have the next speaker now which is Steve and then Kavouss.

STEVE DELBIANCO: Thanks. Steve DelBianco with the CSG within GNSO; was one of the breakout leaders in L.A. where we tried to come up with this decision-making method, building on the community forum discussion that had occurred. And I wanted to clarify two things as you walk up this ladder. One is that we had required corporate board participation on the pre-call as well as the community forum, so that they're part of the discussion.

I also wanted to suggest that we recommended there be a written explanation very early on from anyone who was intending to oppose, who was really uncomfortable with proceeding. Because it's so much better to have that be written and an opportunity for others to respond to it. Not just a written objection, as Jonathan indicates, but a written explanation for why we're very uncomfortable proceeding with this.

And then finally, within the GNSO, we had been in favor of this notion of split voting where a yes or no from the GNSO in terms of determining consensus could be broken out so that different parts of GNSO could be represented. And I only mean to put a bookmark here so that we understand that within GNSO, which is the supporting organization for most of what ICANN manages, and most of what the policy enforcement is about, GNSO has a diversity of opinions. It makes it very difficult for the GNSO to go off on its own and come back with a yes-or-no as to whether it supports or to come back and say whether it objects or not.

If we don't allow the split, and I understand why that's troubling, if you're just looking for a yes or a no, if you're just looking for the answer to the question, "Do you object? Are there more than two ACs or SOs who object?" in determining consensus. The GNSO at times may have to explain that we came to a very close split decision. And, therefore, a minority report is part of what I would add on the decision call among the staircase. Because if, in fact, GNSO came back and just narrowly approves the procession to the next step or narrowly approves objecting and thereby maybe stopping the consensus, there may be a minority report that would really be important for the community to hear about. So that's why split voting was really adopted. It wasn't specifically to achieve the weighting, but it gave you the advantage of also being able to use it for weighting as Jordan

indicated. But I think we can get there. We just have to provide for the fact that there's a diversity of views within the GNSO.

Thank you.

THOMAS RICKERT: Thanks very much.

Kavouss.

KAVOUSS ARASTEH: Yes, good morning. Two things. I hope I have heard it wrongly that people want to define what is consensus. Don't do that. Consensus is consensus, depending on each community and each constituency to decide whatever way they have to decide on the consensus. Not to have CCWG to define consensus. If I'm wrong, okay, don't do it.

And then I see why surprise why you're talking about optional voting. Try to avoid as much as possible to the voting.

Thank you.

>> Can I quickly respond? The voting point is well taken. In terms of there's no intent in this discussion to define how the individual SOs and ACs are making the decisions at all. That is not within the remit of this discussion.

However, we are discussing within the S.O. and A.C. circles what is the level of support or objection that would enable to reach a conclusion that there is a community veto or a community positive decision.

So we're not defining the way the GAC or ccNSO are making the decisions; however, at the SO/AC level, we're trying to address the question whether an objection by one S.O. or A.C. would be sufficient to block the community power or not.

And so we think -- there was some discussions that said would probably not be acceptable that one S.O. or A.C. would be sufficient to block the community power. That's our definition.

THOMAS RICKERT: Follow-up question, Kavouss?

KAVOUSS ARASTEH: Yes. It was briefly presented that because currently whether, according to ICANN, we are well representing the community or not, but this is what we have. We have seven communities and we mentioned that not more than two against. So one singly should not be to put everything into the basket. No more than two.

Thank you.

JONATHAN ZUCK: Which Kavouss is, in fact, defining consensus; right? So in the context of the community council, as we've called it, we need to define what consensus is. We don't need to go further than that into the individual SOs and ACs.

THOMAS RICKERT: Okay. In terms of a procedure, we didn't give you any hope that we would resolve this during this session, but what we try to do, and this is why I had closed the queue, because we're a little bit

behind schedule already, is to make these requirements. Optional voting, I would even say try to avoid voting as much as you can or let's remove it entirely.

But if you agree with this methodology, let's agree that we make this a term sheet for the sub-team to flesh out tomorrow. And the sub-team led by Jonathan is going to be -- yeah. He's surprised now. So we're making him happy today, is tasked with coming up with operationalizing this approach for all the community powers.

Right? So unless you have issues with taking that route, you're invited to speak, but if you have niceties to add to how this can be operationalized, but if you agree with this notion in principle, then I think we -- you should be joining the sub-team tomorrow.

All right? So in the light of that, can I ask you to clear your hands or keep them up?

If you have objections to agreeing on this methodology as a term sheet or terms of reference for the sub-team to work tomorrow.

And I'm just talking about those who have raised their hands. Please lower your hand if you are okay with the methodology and if you can add your criticism or your points to the discussion sub-teams tomorrow.

So a couple of hands are still up, and I'd like, you know, keep it to 30 seconds max, I'd say.

Bruce is next.

BRUCE TONKIN:

Thanks, Thomas. It's Bruce Tonkin.

Just one observation on the issues where this process would be invoked. Examples of that have been budget approval and bylaws changes. So generally what the Board does for either of those things is we have a public comment period, and typically we meet with each of the supporting organizations and advisory committees and the stakeholder groups at public meetings. So there's already quite a bit of discussion that's happened.

Then assuming this process is kicked off, I think perhaps you might want to add a last sort of bit in your ladder, a dialogue that then happens with the Board. Because, really, this would happen -- this would assume the Board -- some failure in our initial process, because normally we try to avoid this ever happening. If it does happen, it means somehow we've misread all our discussions with the community prior to making that decision, which can happen.

You might want to give consideration into the last point of that letter that there would be a community dialogue, then, with the Board to try and resolve the problem and then how that might happen. In other words, just think through what's the best way for that dialogue to actually happen in the last point of that diagram. Because I think that's probably the most important piece. You know, the community has identified there's an issue. What's the best way to have that conversation between the community and the Board? Because hopefully, that can resolve it before we get to any kind of lawyer-based dispute resolution processes.

JONATHAN ZUCK:

Thanks, Bruce. And in fact, that was the intention of that last rung in the ladder. In other words, nothing in this document has anything to do with enforcement. This is just the mechanism for

the community to reach consensus and make a presentation back to the board.

So in the sub-team tomorrow, we'll do the very thing connected describing, which is to look at what that might look like, but that isn't what -- that's what this last rung is meant to represent.

BRUCE TONKIN: Yeah. That would be helpful. I'm happy to help in that. But really --

JONATHAN ZUCK: Right.

BRUCE TONKIN: -- just basically making sure that the --

THOMAS RICKERT: I'm sorry. We're talking so much about detail. Let's -- we really just want to agree on the general approach, and certainly we can add and that's a nuance to the process that the board can be part in the deliberations and it should be in order to mitigate friction, right? But that -- that's more for tomorrow.

Alan?

ALAN GREENBERG: Thank you very much. And I'm not objecting to what is here, but I will not be able to participate in the breakout tomorrow, likely, and I would like to add a couple of comments to be considered, so please indulge me.

Number one, we have been talking about things like --

THOMAS RICKERT: Can you send them to -- send them to Jonathan?

I mean, we really need to be conscious of time today, so if they're requirements, if you --

ALAN GREENBERG: I will stop talking then.

THOMAS RICKERT: This is just about agreeing on the terms of reference for the sub-team.

I see you're upset. Okay. Go ahead.

ALAN GREENBERG: You're spending a lot more time telling us not to talk than letting us talk. I don't think that's appropriate. Thank you.

THOMAS RICKERT: I just invited you to speak.

Avri?

AVRI DORIA: Thank you. Mine is a quick question, hopefully, of clarification on the detail.

You said basically that it is only applicable to the powers. I wanted to ask about, in relationship to, for example, AoC recommendations and such, including the one of separability:

Does this process apply to them or are you excluding them by saying it's only the specifically enumerated powers?

Thank you.

MATHIEU WEILL: Just can you clarify your question for clarification?

[Laughter]

You're -- the process you're talking about is --

AVRI DORIA: Right. This.

MATHIEU WEILL: -- there is -- there is a review team recommendation for separation, for instance, right? And what you're asking is: If the board refuses to implement this recommendation, would that process apply?

Give me a couple of minutes to review the report on that and we'll provide the answer.

THOMAS RICKERT: Next speaker is Sebastien.

SEBASTIEN BACHOLLET: Yes. Thank you.

Just for the framing of the question, I really think we need to find a way to talk about the forum -- the community forum, to try to find the consensus.

I still think that keeping everything into our silo organizations is not a good way to go, and if we express that at the end it must be the SOs and ACs who need to have one say, it's shrinking the way this organization can -- is diverse and behave and discuss the discussion -- the point, and it's why I think it must be at the level of the community forum globally. Thank you.

THOMAS RICKERT: But this is not about discussing or defining the community forum. Let's just be clear. This is about the decision-making part. So we have a separate discussion on how to refine the community forum.

Tijani?

TIJANI BEN JEMAA: Thank you, Thomas. Tijani speaking.

I don't think that one size can fit all, so I heard at least two objections.

I don't think there is only one level of consensus. There is a lot, depending on the powers. So I don't think we will use the same level of consensus for all powers.

THOMAS RICKERT: Thanks, Tijani.

Let's hear Eberhard first. Kavouss you already spoke, to let's move to Kavouss afterwards.

EBERHARD LISSE: I object to having such breakout sessions tomorrow. I'm on record on this. I just want to make sure that you are aware of it.

THOMAS RICKERT: We are indeed.
The last speaker is going to be Kavouss.

KAVOUSS ARASTEH: Yes. Perhaps I was not clear. With respect to the advisory committee, if not all, most of them, I suggest not to put objections but saying that "advised to the contrary," because it might be possible that the advisory committee maintain their advisory capacity and give advice but not objection as such, and that advice should be anything.

So to maintain the situation as has been mentioned by ICANN, by NIA -- NTIA, by many other people, perhaps they remain the status situation that they have, so when you say no objections, say "or advised to the contrary," so we maintain the option of advice. Thank you.

THOMAS RICKERT: Thanks very much, Kavouss. And let's now take stock and move on to the next session, so I under- -- Mathieu? You owe the response?

.>> (off mic)

THOMAS RICKERT:

Okay. Then the idea of this discussion was actually to reach agreement on this approach to be fleshed out, and Alan, as you know, your input is always highly appreciated but we deliberately did not want to have a discussion on how these individual powers can be operationalized, but let's now see whether there's any objection to tasking the sub-team to work on the basis of this approach as terms of reference and they will then be asked to come back to our group and report on their results, so hopefully we can then take stock on that.

We note Eberhard's objection to the breakout sessions as such.

If there are more objections to this approach, please make them heard or write them in the chat, but we think that there is value in using the face time that we have tomorrow in having different sub-teams working very focused on different open questions and then bringing the results back to the -- back to this group.

So I don't see any objection to this approach so I think this is a first big success of this meeting because we say, "Well, we have removed one of the major concerns with voting and we're now looking more closely at alternative ways, being cognizant of Jorge's suggestion that we must not only look at the level of objection but we need to make sure that there is support in the first place." And with that, I'd like to end this -- this agenda item and we should now move on to the next agenda item on the community mechanism, which is actually the enforcement bit, and for that, I'd like to invite Jordan again to update us on the public comment analysis.

Over to you, Jordan.

JORDAN CARTER:

Thank you, Thomas. Hi, everyone, again.

This is the -- the detail here is on the community mechanism as sole member part of the PC analysis from Work Party 1 and I can't remember what page it starts on. I think it's on Page 24. There you go.

And so, you know, there was a strong appreciation, I think, for the need for enforceability of the community powers. The idea that they would just be a kind of "nice to have written down in the bylaws" without any particular mechanism to enforce their following, no one's really suggested that. Everyone's been talking about different models of enforceability. And I'll just restate what that diagram showed.

The enforceability is right at the end of the process. We keep talking about it a lot because we have to define the end of the process because that's the bit that doesn't exist today.

In the feedback, there was sort of broad support for the sole member model as being an improvement from the SO/AC membership model, the individual UAs that we had proposed in our first-draft report, and there was support for community decision-making that led to the enforcement of those powers.

There was also support in the comments to be as kind of restrained as possible. People didn't want us to sort of start sort of flicking switches and trying to change ICANN for the sake of it, and that's something I think that the CCWG or the vast majority of us would happily agree with.

But there were some areas of concern and divergence as well, and we've written that down for you in the report.

We've talked about some of them already that are in this section of the comments, but there is some questions about the enforceability model.

And what I want to say is that in all of this, I keep coming back to the requirements that we have as a group for the enforceability, and the balance of how -- how far we need to go down the route of legal enforceability.

And what we've had all through the dialogue is a kind of clear understanding that we have to be able to workably enforce all of the community powers, so the five powers that we've got in respect of budget, standard bylaws, fundamental bylaws, and so on, and the separation review that is part of the stewardship transition.

And we know that the model that we proposed has got -- the public comment from the CWG stewardship was that the model that we've proposed met their requirements, so it isn't a holdup for the stewardship transition. But we had some pretty direct comments from some other stakeholders that the membership model, rightly or wrongly, creates concerns for them.

So the question the co-chairs asked me yesterday was where did I think we could work our way through this. And to me, the answer to that is a designator approach, a single designator approach. And the reason for that is that the key ability to enforce removal of board members and to prevent changes to the bylaws together represent a considerable improvement in ICANN accountability compared with today. If you can't change the rules of the game by yourself and you're subject to removal if you try, that's at the end of this point.

So saying that a designator model might be something to consolidate around doesn't say that the other community powers aren't important and it doesn't say that the needs to be able to deal with the budget question isn't important, for example.

We've talked about the fact of building community processes to deal with all of those.

But I wonder personally whether we might be able to come to an agreement around a designator approach here as the best way not to compromise, because our job isn't to compromise -- we're not here to negotiate, we're not here to try and come to some crappy lowest common denominator settlement -- our job here is to focus on our requirements and we've accepted a principle of simplicity, and so if we can achieve our requirements to an adequate degree with a simpler model, that's the process we've been following. That's the process we should keep following.

So I think that's what's on my script, which I wrote.

[Laughter]

THOMAS RICKERT:

Yeah. That's important. We didn't write that for Jordan in a -- what was said -- authoritative co-chair-type manner, so he did that himself.

But before we open it up for discussion, I'd like to comment a little bit on the whole discussion about a mechanism.

We said at the outset that we defined requirements and that we would be happy with whatever model, whatever legal vehicle delivers on the requirements. We said that we would have a

feedback loop, we would track -- stress-test what we have, we would take public comments, and then see if it's not perfect, we're trying to tweak it until it's good to go.

So let's please not say that we are abandoning a certain model or that we are giving in on anything, because actually we are following the evolution of our recommendations.

And if you think back, when we started all this, it was Roelof Meijer who said -- and who is now quite alarmed --

[Laughter]

He said, I think it was in Frankfurt -- and those who were in Frankfurt will remember this. He said, "We need a big stick to replace the NTIA backstop." And everybody nodded. I mean, I was sitting at the front table at that time and everybody thought that was a very good idea. In essence, we need one big stick to call ICANN to reason if it goes rogue.

Then I think it was Chris Disspain -- he can't object now because he's not in the room but we will be able to tell him -- Chris in fact, said, "Just having a nuclear option, just being able to spill the board, which is the option that we have with the designator model and which is the option that we looked at at the time, just gives us, in fact, this big stick. Why don't we have a more nuanced inventory of sanctions?"

And that led us to considering the membership option.

So with that, we got the more nuanced repertoire, we got what now looks as what we need, but actually what we got, if you wish, as an unintended side effect of this more nuanced repertoire is a plus an enforceability, let's say 120% enforceability, but we found out that this has caused a lot of

confusion with different parts of the community who claim that we have statutory powers that we cannot or can control. There's diverging legal advice on that. So we don't have 100% certainty that we will remove concerns, concerns that could lead to a destabilization of the organization.

I'm not taking any sides here. I'm just trying to establish the status quo of where we are.

Also, there was the fear that this could lead to a change -- or to too much change of ICANN's governance structure.

And if you take these points, what do we do? We refine, we readjust, we take the evolution further. And in fact, in this case, we might just consider going back from 120% to 100%, which is the big stick which is provided to us with the designator model.

And even further, even more, we had a legal memo that said, "Well, in fact, ICANN is a designator organization at the moment." I mean, this is not a brand-new idea, but we got sidetracked with the idea that we should go with membership because it gives us this nuanced repertoire. And let's be clear. We are going to get the community powers. We're going to get them. We're going to put them into the bylaws. It's all going to be there. We're not taking the community powers away. We're just taking -- changing the enforcement regime to one that gives us what we need -- i.e., the big stick -- but it doesn't give us a set of smaller sticks that originally, at least, Roelof hasn't asked for, and I'm sure that many others didn't ask for many sticks but they were asking for a big stick. We want to replace the U.S. government backstop. And, therefore, let's not view considering the designator as having failed in pushing through what we wanted. In fact, the community pushed back on what we proposed, the root cause of that being in voting and other areas

as well. But if we can preserve meeting the requirements, which was our original goal, and remove concerns -- remove the concern of reallocation of power, remove the concern of potentially statutory powers going out of control -- then I think we deliver exactly what we promised to do procedurally.

And now let's open it up for discussion, and I suggest that, you know -- or at least we've tagged this as the community designator model that we could use.

So the community would be the designator. They could put people on the board. They could take people back from the board, should they so wish.

How this is exactly done, we're going to discuss in different areas of this session -- right? -- but that's the general idea, and I hope that this will at least make Alan a little bit more friendly with me again because the designator model is actually something that he favored and that he brought up. Robin Gross was a fan of the designator model. So let's not -- I think this session is not to discuss the niceties on how we operationalize a community designator model. Let's get back of this -- let's get rid of the historic issues that we had surrounding the various models. But let's -- can we please agree that designator is something that could fulfill or will fulfill the requirements, that will remove the concerns, and that we can all work on fleshing out so that we all like it.

So there's a queue forming. I think that Bruce and Eberhard's hands are old hands because I haven't seen them going down earlier, so next in the queue is Tijani. Please.

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- TIJANI BEN JEMAA: Thank you. Tijani speaking.
- Jordan, you spoke about the designator model. I hope that you are speaking about sole designator model because I oppose strongly against full designator model and I support strongly the sole designator model.
- MATHIEU WEILL: Yes. That's -- clarification for the record. Nodding is not sufficient. This is about the single or sole designator model where the community -- the community gets together and is the designator for the whole structure.
- THOMAS RICKERT: Thanks very much. Let's move further down in the queue. Kavouss is next.
- KAVOUSS ARASTEH: Yes, Thomas, I think I have heard you referring that we have failed. No, we have not failed at all. We are more determined than before.
- THOMAS RICKERT: That's what I tried to emphasize.
- KAVOUSS ARASTEH: If we receive comments, doesn't mean that we have failed. We receive comment, very good. Multistakeholder, subject to receiving comment. If those comments are valid, we improve our situation. But I can tell you that we are -- that's to say most of them, the overwhelming majority, more determined than before of what we have done. Never (indiscernible) that at all.

Never, ever. So we stick on that, but we improve it. Thank you. Thanks very much, Kavouss, for that reminder. In fact, obviously I haven't managed to put it that eloquently, but that was the notion, we should not perceive reacting to the community's concerns as a failure, as a weakness. This all makes our proposal stronger. Steve. Thank you. Steve DelBianco with CSG. What you have on the Adobe and on the screen right now is essentially what Jonathan Zuck, Kavouss, and I asked the legal team to evaluate about a week and a half ago and the legal team was able to put together the answer to this table, to fill in every cell. And it's just not -- it's not complete as of now and it isn't suitable for display in Adobe and it contains nothing you haven't already seen. If you recall for the past several months we've looked at comparisons between single designator and single member, the far two right columns. And the first column, the first column displays those required community powers we've talked about all morning. The second column through the fifth column display options. Options for the community, CCWG, as to what we think is the minimum enforceability we need to get at the point of transition. And this is why Kavouss, Jonathan, and I asked the legal team to frame it in a way that all of us could consider where we need to end up. And what Thomas just talked to you about is if you look at the column saying single designator, the second to last column, asking us to consider whether that's the appropriate place to be at transition or, as I see in the chat, should we be all the way on the right edge of single member at the point of transition.

The other two columns, the enforcement with current bylaws, you'll be -- you won't be surprised to understand there isn't any enforcement there. And MEM, which is the column after that, has a very different sort of enforcement focused in the IRP alone.

So the conversation we need to have as a group is where do we end up on that spectrum. Because we already know what the particular elements of enforcement are for each of the seven powers as we array them to the right. So I'm just trying to focus us on that. We should try to achieve consensus before the break about where we need to end up.

THOMAS RICKERT: Thanks very much, Steve. Avri.

AVRI DORIA: Thank you. Avri speaking. At this point I'm very uncomfortable with the dais having sort of eliminated the single member for the single designator, and it's especially because of line 7 there. Remembering that we're here to replace the NTIA's capability to do a separation, to separate the IANA function. That is not a capability that we have, as I understand it, in the single designator other than by eliminating the Board.

Now, eliminating the Board is just -- I mean, it's a wonderful thing to have in there that makes a lot of people feel good, I think, but it is not a practical solution. And not having a direct solution to enforceability of that separability decision seems to me a fundamental blocking problem to backing down to the signal -- to the single designator. Thank you.

THOMAS RICKERT: Mathieu.

MATHIEU WEILL: So that question, Avri, is providing me an opportunity to respond to your earlier point which was clarifying what happens

in the current second report of the CCWG. In the event there is a separation review triggered, it recommends separation, and then the Board doesn't follow up on that. So the current report states in its paragraph 101 that this decision by the Board not to act or to refuse to act would be -- could be subject to IRP challenge. That was responsive to your earlier question. So in the second report, it's not the escalation process we've seen earlier that applies but an IRP challenge that is possible. It is up to us to adjust that if we are comfortable with that. Okay? That's the earlier question.

Now the question you're raising now, Avri, is still about the separation. I think that's very important and very -- obviously central to our decisions. In the single designator model can we achieve -- how can we achieve enforcement of this in case the Board would not defer to the -- to the separation review team recommendation or to the IRP decision. And I think that this is certainly something we need to make sure we're comfortable with. This -- my understanding so far is that there will be at least indirect enforcement through Board removal, Board recall. I mean, the whole Board can be recalled in the single designator model. But maybe -- but I think that still needs to be fleshed out and worked out because it's absolutely critical and probably in our report at this point it's not clear enough how it works. But I would just like to have a quick nodding or quick response by our counsel Holly, whether there is -- or Rosemary, whether there's any red flag on separability enforcement in a single designator model. I'm not asking for the fully pledged answer obviously, but if we have sufficient confidence to move forward on this.

HOLLY GREGORY: So I think when you consider that staircase of escalation, that would certainly apply in all those community processes to this decision. And there would be several opportunities through that escalation staircase that was explained for the community to weigh in and let the Board know of its views. At the very end of that escalation process would be an IRP.

If the Board then still refused to take the will of the community on this point, then you would move to your indirect enforcement mechanism which would be a community consideration of whether to recall the Board.

>> Thank you, Holly.

THOMAS RICKERT: So I see that you had a follow-up question and then we go back to the queue.

>> Sorry, I think this is a really important question to tease out. So you refer to the indirect enforcement there. Can you just compare that with what the direct enforcement would be with a member?

THOMAS RICKERT: Holly, before you do so, Avri also had a follow-up question on this one. So I suggest we hear that first and then Holly and Rosemary answer the two.

AVRI DORIA: Thank you. Avri speaking again, and thank you for giving me the follow-up question. With the first answer that Mathieu gave which is that the separability question does not go through that escalation process but goes directly to IRP, I wonder how that mixes with -- with Holly's response that there would have been a chance to interact through that process because Mathieu's answer was that the community escalation process was not inclusive of a separability issue. So I -- I'm confused still. Thank you.

THOMAS RICKERT: So now the burden is on Holly and Rosemary to clear up the confusion -- all the confusion.

HOLLY GREGORY: Well, I think that we probably need to get some clarity around this point. I don't know that the current second draft proposal speaks to whether it goes directly to an IRP. I thought in most instances going to an IRP was supposed to be after an opportunity for an escalation process including reconsideration. So I may have made a wrong assumption. I'll let Mathieu clarify that.

MATHIEU WEILL: I think there's a need for greater and greater clarity on this, looking at every step of the process, both in the current report and in possession changes that we would -- adjustments that we would make to the current process. What I'm hearing, though, is that it's not totally -- there's not a big, big gap between the current report on that matter and the way -- the proposal to move with the single designator model in terms of capability of

enforcement on the separability. But the issue we're having is that we need to be very, very clear how it works. And I would -- I would certainly flag this for further work probably in the breakout sessions. But I'm not hearing anything that says don't move with this option of single designator because it's not going to work on this, which is really what I -- I want to make sure we're having here.

>>

Your turn.

ROSEMARY FEI:

I think that Jordan had asked us to compare the directness or how the enforceability would work. So Holly clarified that under a sole designator if you went through all the escalation steps and an IRP and you still had a problem, you would go to the recall.

If you had a single member instead, it would be all the same up through the end but the difference is that because you have a member that can make a decision at that point, you don't have to recall the Board. To go to court and be -- and enforce the IRP and not -- not have to worry about the fiduciary duty of the Board at that point. Because the member will have made the decision that separation should occur and that would be a reserved power. That's the difference. We can't reserve that power for a designator, but under California law we can reserve it for the member.

THOMAS RICKERT:

Okay. Let's now go back to the queue which I'd like to close after Robin. Roelof.

ROELOF MEIJER:

Thank you, Mr. Chair. I would first like to react to what Avri was saying. And I would like to submit that in my opinion, separating IANA from ICANN far better deserves the non-nuclear option than removing the Board. I think the -- we cannot even begin to think what the consequences of such a decision would be. So I think it's perfectly legitimate that if the community wants the IANA function to be separated from ICANN and the Board refuses to implement the decision, that the Board is recalled. What other option would there be? Okay, we can take the Board to court, force them to -- to execute the separation, and then they will continue to be the ICANN Board? To me that's -- sounds crazy. And in fact, it sounds crazy for most of the options when we think that we need this possibility to take the Board to court. I put it on the email list. I think if you have an executive board that refuses to do what it's being told by its bylaws, that that board deserves -- deserves nothing else than to go.

THOMAS RICKERT:

I'm inclined to agree with that. Alan. Alan, you get an extra 30 seconds now to make up for the --

ALAN GREENBERG:

I don't think I wanted an extra 30 seconds. I support strongly what Roelof just said. But I'll point out that in the memo that we received on the conflict between fiduciary duty and arb -- enforceable arbitration, divestiture of subsidiaries and I suspect affiliates was one of the items that was identified as something that we cannot exclude from board fiduciary duty. But I will point out that separation does not mean divestiture of the subsidiary. It means moving the function somewhere else. We can keep on -- have PTI there and simply assign the function to Thomas. I trust him to be IANA and we're going to assign -- PTI is

an empty shell. The still there. Nothing is being divested. So there's a lot of mechanisms to effect separation other than divestiture, just to keep that in mind. Thank you.

MATHIEU WEILL:

Just a quick response on the word "fiduciary duty" here. I think it's clear that no separation of IANA, considering the importance of IANA and the assets that are associated with it, could be undertaken without the Board's formal approval. Because it's such an important part of ICANN and so it's not IANA has the fiduciary duty or divestiture is the fiduciary duty. The Board must make a decision. It needs to make this decision with the duty of care and everything and so on. But it's -- it's -- doesn't mean that the Board cannot approve this decision. The Board can approve this decision after doing its fiduciary duty, which is the duty of care, investigation, and thinking whether it's the best thing for the global public interest. But the Board can approve it. So we're not forced into going into these enforcement mechanisms. If there is a separation review that says on consensus basis we need to separate IANA from ICANN, there's probably a good reason for that. And so we can hope that the Board at that point would say, well, we understand the reasons. We're now mature enough or the world has changed, whatever, and it's perfectly okay with us. Okay? So that's just the clarification I'd like -- I wanted to make on this, and let's not use too much fiduciary duty. But it's clearly within the Board's remit to make a formal decision on this.

THOMAS RICKERT:

Thanks. This is important. I saw that Holly and/or Rosemary wanted to comment, and let's see whether your questions are still open afterwards, Alan. And then we'll move to Cherine.

ROSEMARY FEI: This is Rosemary. So what we wanted to clarify is that it -- everything that Mathieu just said is absolutely correct, that the Board could, within its fiduciary duties, make this decision. They go through the process, et cetera. If you had a member then it would be possible to give that decision instead to the member. You can't do that in the designator model.

THOMAS RICKERT: Thanks very much, Rosemary. So now it's -- still a follow-up question, so we need to get the right. So Cherine, sorry again. You have to wait a little longer. Alan.

ALAN GREENBERG: All I was pointing -- trying to point out was that the legal memo said, in the case of divestiture that was one of the examples of something which does -- is included in fiduciary duty and can't -- perhaps cannot be overridden by an outside arbitration. I was just pointing out that separation does not require divestiture. It can be done by more subtle reasons, which are therefore not necessarily mutually exclusive. Thank you.

THOMAS RICKERT: Thanks very much. And I think we have Roelof (indiscernible) in the room, so Kavouss made a suggestion to maybe visualize the process for easy understanding. Maybe Roelof can look into that. Cherine, thanks for waiting patiently.

CHERINE CHALABY: Thank you. I have a question regarding the single designator model. From everything you said about the community consensus decision, I'm assuming that all of these powers

through -- under the sole designator model will be powers exercised by a community consensus decision. Is that correct or not?

THOMAS RICKERT: That is correct.

CHERINE CHALABY: So my follow-on question, therefore, does this mean you agree with the principle, therefore, that individual -- removal of individual Board Directors would be a community consensus decision?

THOMAS RICKERT: I guess that's the area that Mathieu mentioned earlier. We have too many moving parts at the moment. So let's try to nail this now. And I think the question that you've asked is still open. And we have a separate discussion which is going to follow this one on the agenda where we talk about individual board member removal.

CHERINE CHALABY: But it's a matter of principle rather than mechanism. The principle with a single designator model is all the empowerments, all the powers are consensus decision. One of the powers is the removal of individual director. Do you hold to that principle.

MATHIEU WEILL: Hold on. I think just a clarification on this. So this is on the next agenda item, so we are intentionally not answering. What I want

to state, and -- is that it's going to be our decision in a single designator model, the two options are possible to be implemented in the bylaws. It's going to be technically the single designator just like in the single member, with a single member which will remove board members in the extreme case where that happens. Technically it will be. But the process by which this decision is made, it's an open question for us to address in the next agenda item, whether it's a community consensus decision on this or if we defer -- the community body just takes one SO or ACs view and then just ratifies. So it's still open. We have the two options. I'm not taking a side here. But the single designator model does not preclude this decision. Thank you.

THOMAS RICKERT:

Cherine, we're not making you happy with this, are we? I think if you wait another 90 minutes we will be more -- we will have evolved this more. But I guess the take-away message is that this model would allow for both options, depending on what we come up with. Bruce. Where do we have the roaming microphone? So we deduct that from your time, Bruce.

BRUCE TONKIN:

Thank you. Just one thing to notice in the way consensus policies are enforced through the current gTLD registrar agreements, there's a combination of bylaws mechanisms. So bylaws is policy gets developed and the board approves the policy, and then there's also contractual mechanisms. The fact that a registrar or registry in the gTLD world abides by that consensus policy is actually through contract. And I think when we look at the IANA function, you probably want to use a similar combination. So on one side you have a bylaws process. So

there's a bylaws the community reaches some view in that bylaws for separation, for example. Then there -- if the Board doesn't follow that, then there's a dispute process, and then if the Board doesn't follow that dispute process there's an enforcement mechanism such as removal of board directors.

So that's one flow. The other flow you want to build in, then the contractual flow, which is that the users of the IANA function, being the gTLD and ccTLD organizations, the Regional Internet Registries, and ISOC IETF, should have in their contracts with ICANN that ICANN will also abide by that process. And those contracts can be enforced as well.

So I think you -- for something like the IANA separation, you should build it into both the contracts for the users as well as in the bylaws. And jointly, that gives you strong enforcement.

THOMAS RICKERT:

Thanks, Bruce, that's helpful. And I think you've proven to be an eligible candidate for the sub-team for fleshing this out.

Malcolm.

MALCOLM HUTTY:

Thank you. I heard earlier Thomas say that he hadn't heard anyone raise that there were any red flags that have been identified as to why the single designator model might not achieve these listed powers. Now, I don't know if I correctly heard that or interpreted it, but I would say that having read the legal advice, I do see a red flag in relation to line 6 regarding the IRP specifically when it comes to the issue of requiring ICANN to enter into binding arbitration.

The memo on default judgments does call into question whether a default judgment by an arbitration panel could be effectively enforced against ICANN.

Now, in the cases of single member, the remedy for ICANN refusing to enter into the IRP process is that the single member has the power through a derivative action to obtain a court order to require ICANN to enter into the IRP. That's not available in the single designator model, and that I consider is a red flag if default judgments aren't available or might not be available.

THOMAS RICKERT:

Thanks, Malcolm.

I suggest that we hear the other commenters and then hand over to Holly and Rosemary to answer the questions. But let me just check. I think we have remote participants. We haven't had a single remote participant in the queue asking for being able to speak. So all you remote participants, you would make my day if we could hear a remote voice; right? So please join the discussion not only in the chat, chat is much appreciated, but I think it would be great if could you speak as well.

Next in line is Jordan.

JORDAN CARTER:

Thanks. I realize that it can be annoying to ask questions of the lawyers, but I think there's a -- as I have been a (indiscernible) strong supporter of a single-member model, and the fact that I see a possible consensus forming around a different model doesn't mean that I don't think that, so I just want to be clear.

But I do have a question that I need to ask both Holly and Rosemary, so I need to ask Holly to listen.

Sorry. Sorry to interrupt you.

And the question is that in -- There's a lot of jurisprudence and a lot of experience with dealing with membership models, and so there's a lot of case law, and it's a very familiar system in the context of enforceable powers and stuff.

Some of the early material we saw about designator models indicated that designators usually exist alongside members, they're a way of kind of extending membership rights to a broader set of third parties beyond members.

My question is because we have to have a solid legal foundation for the enforceability of these powers, is the designator model more feeble or more impoverished, if you like, in terms of the clarity around enforceability? And the reason I ask the question is that the clearer it is the way any of these powers will play out in court or whatever, the more clarity, the more inevitability about the decision, if you get to that point, the less likely it is that you'll ever get to that point. In other words, it's uncertainty that breeds disputes and leads people to going to court.

So do you have an opinion about that, the different streams and membership models?

THOMAS RICKERT:

Let's hear Robin and Wolfgang first, and then we are waiting for Rosemary and Holly to give us combined answers to the questions.

Robin.

ROBIN GROSS:

Thank you. This is Robin Gross, for the record.

I also have a question, mainly for our legal advisors, and that has to do with our concern about fiduciary duty under the designator model and the extent to which board members could override some of the community powers by claiming fiduciary duty or in the interest of the global public interest, because it sort of sounds like if a board member simply utters those words, "This decision was in the interest of the global public interest," that there's very little we can do to change that decision.

So how -- My question is really about how can we constrain that, or can't we? Or are there any limitations that we can put on that? Is it not the case that claiming "in the global public interest" is carte blanche to do whatever action they want?

So just some clarification around that would be really appreciated.

Thank you.

THOMAS RICKERT:

Thanks very much.

Wolfgang.

WOLFGANG KLEINWAECHTER: Thank you very much.

I want to continue what Cherine has raised, and Mathieu gave the answer we cannot answer this. But I think that's a key question, you know, whether the five designators, you know, act in -- on a consensus basis or just, you know, in an agreement basis. So this is really a key point for me. Because if you go back

to the reform in 2002 when the new mechanism was introduced, the basic argument behind this was we have to have a redistribution of power. No single group can capture the Board. That's why we have five different designators and a stakeholder process in the NomCom. So that means, you know, every year, the Board is reshuffled and you have a new group.

I know that some board members, you know, are already there for a long time, but, you know, they had -- go through a process of checking, and then they were reelected.

So that means the decentralization of power is a key factor for ICANN. And whatever we do, we cannot remove this or reduce this. And so far, you know, to answer these questions, whether this can be -- needs consensus of all groups or whether this is just, you know, one group raises the issue and gets rubber stamped by the others is an important point.

And let me add another experience when I have the microphone. For me, it's deja vu in Tunis 2005 when we discussed in the WSIS four models for ICANN oversight. It was ICANN oversight with the new corporation model in the final negotiations. And, you know, there was, you know -- it was midnight and after midnight that then people realized, okay, we will not agree on a model. What we can agree is on a process. And it should not be a new one; that we should base the process on what we have, on the existing mechanism. We have to enhance this. We have to make better. And the outcome was rather creative language.

And this is what I hope we will achieve here in Dublin, that we create, really, something new. So that means to use old language you which has also some historical baggages, you know, is sometimes risky. So that means let's open our own mind and to be creative and to come out with a language which

enables that everybody agrees on the basis of this distribution of power.

Thank you.

>>

Just two clarifications because the historical perspective, I can comment on that.

So what we've agreed in the first part of this meeting would be to investigate a process for decision-making of the community. That is moving into consensus-style decision-making. So that's answer to your initial question.

As I said in response to Cherine, we might -- we still have to refine this in terms of individual board director removal, but that's the exception, if you want, into this.

And the one -- the other thing I want to clarify on the record is that this community body, single designator or member model is the same thing. It is not a superboard. It is not a body that is mirroring the Board. It is not mirroring the Board's attributions. It only has power to just say no or yes. It doesn't redo decisions.

So it's not an oversight body that is going to be micro managing the Board. I think that needs to be very, very clear. This is not how this is going to play out in any way, whether in the single-membership model or in any model, actually, because it has only five or six powers, and you can only say yes, no. That's it. So that's important, I think, to remind in light of this historic retrospective.

THOMAS RICKERT:

So there's a new queue forming with Kavouss and Steve, but I suggest before we have too many questions for Holly and Rosemary, I suggest that you answer them, and we should then try to find a way to capture this with Roelof's help, maybe, so that we come up with a set of issues that you saw. And I'm sure that the community would have the same questions. So should we pursue this path, I think we should have slides ready for the engagement session where we spell out all the different scenarios and say what effect this model would have.

So Holly, Rosemary, I'm not sure who is going to go first. Over to you.

HOLLY GREGORY:

So I'm going to speak first to the question that was raised about the default judgment memo. I want you to recall that that memo was provided in the context of concerns about the MEM that the Board had proposed and concerns that arose in the community about whether or not the Board -- what would happen if the Board didn't want to participate in an IRP in a binding arbitration. And the response had been from some in the community that not to worry, default judgment is readily available in arbitration and in court.

Default judgment is available. It's complicated. It's not automatic and that's what we were pointing out.

So we were sort of pointing out you don't want to have to -- while that is available, it's not the simple if they don't participate in the arbitration, you just go and get an award in your favor and it's guaranteed. That was the whole point of that memo.

The next question you asked was about the clarity around the membership versus the designator model from a legal standpoint. And I'm going to turn to our California expert, Rosemary.

ROSEMARY FEI:

Okay. So, Jordan, you were asking whether it was -- the designator rights were somehow feeblers. We can't give designators the same rights we can give members. So I suppose in that sense it is feeblers.

In terms of the enforceability of the strength of going to court, you're right that there is a much larger body of law involving membership rights, and the statute does specifically give members standing. Designators are not specifically given standing, but the bylaws are consistently, under California law, treated as a contract for certain purposes, including the ability to enforce rights that you are given in the bylaws.

So although it's not as statutorily bound and there isn't the same body of case law, I do believe that the designator should be able to enforce their rights. They can't have as many rights as members.

And then Robin Gross asked the question about whether we -- I guess I would describe it as constrain the fiduciary duty to define what the global public interest is so that the Board has -- has to come to the same conclusion as the community about what is in the global public interest. I believe we answered that fairly thoroughly in the last -- one of the more recent memos on fiduciary duty. I don't think you can. And so I think you are really left with, in the end, if the community's view of what's the global public interest and the Board's view of what's the global

public interest diverge, and you are not in a membership model, then you have to rely on recalling the Board.

THOMAS RICKERT: Thanks very much.

Kavouss, Steve, and then Becky.

KAVOUSS ARASTEH: Yes. I think my distinguished colleague referred to WSIS 2005. That was a multilateral discussion. It's quite different from the multistakeholder discussions. There were government involved with the pull of politics, and here we are not too much with politics. We are thinking with techniques and procedures and administrations, number one.

Number two, (indiscernible) entirely different in 2015 than 2005. Entirely different.

Thirdly, we cannot leave the model and just talk about the process. They are part of each other. This is identity of the process. So we have to have that. I'm not supporting a particular model at this stage, but they are connected to each other.

Thank you.

THOMAS RICKERT: Thanks, Kavouss.

Steve.

STEVE DELBIANCO:

Thanks. Steve DelBianco, CSG.

I want to remind us that we have to select a column from that diagram on the board. We have to select a column like SD versus SM. I don't think we can select column four for options one through three and column five for options -- for powers numbers four, five, six and seven. I think we have a slider -- I mean, if you can put up a slider on there, we have to slide between single member, which is what we proposed in our second draft report, and slide -- do we wish to slide one to the left on single designator? And because of that, the sub-team that Thomas has talked about, and I, would desperately like to know if the chartering organizations here in the room have a particular community power -- which of course is the seven rows; right? If the chartering orgs as well as the CWG have a particular community power which they believe requires us to be in column five? Since if somebody has something for which they have to die in a ditch over, it would be great to understand that for powers four, five and six, they require the enforceability of single member, well, that pulls all of that chartering organization's preferences into column five.

So by displaying it as a chart, I didn't mean to mislead us into thinking we can pick and choose. We have to pick an entire column. Our second report picked column five, single member. The co-chairs have teed up the idea what if we slide to the left one to single designator. And I'm afraid the discussion -- Asking Holly and Rosemary to inform us as to the differences only gets to the critical question what do the chartering organizations feel we have to have prior to transition? And we need to get that surfaced in this conversation or the sub-team will be blind about what it needs to come back with.

THOMAS RICKERT:

Thanks very much, Steve.

Becky, you have lowered your hand, so you're passing? Okay.

I guess the question for us now is how to proceed with this. So there are no hands raised. I hope that -- that all questions have been answered that you have now.

I would suggest that should you have more questions, particularly legal questions that you would like to get responses to, send them in by email and we will try, as good as we can, to encourage Holly and Rosemary to respond quickly to them. So we will not answer them ourselves, because we don't want to second guess on what's legally sound and what not.

But I think that in terms of chairing this effort, we have made a good-faith attempt to see what the potential be way forward after having analyzed the comments would be.

So I would strongly like to suggest that this group does not go and tries to analyze all of these columns, but let's see whether we can live what's in column number four.

Let's see whether we can make the community designator model work. Let's try to answer any remaining questions there might be and let's try to operationalize it.

I think if we want to make this ever, we need to settle on a model.

And if we -- if we do settle on the model, then we have something that we can put our head around and lean on when fleshing out other details.

So it's crucial that we take this as a -- as a basis for our deliberations. Right? That we're brave enough to say, "This is

what's, from now on, our reference model. Let's see if it works." And we would do, as we always do. If we see things that don't work, we need to revisit what we're doing.

So I -- Kavouss and then Malcolm.

Malcolm?

MALCOLM HUTTY: Thank you. I disagree with that approach. You are asking us to change --

THOMAS RICKERT: Noted.

MALCOLM HUTTY: You are asking us to change our reference model that we have developed at some considerable length and that we have put out to public comment, and that most of the public comment has been essentially supportive, with important dissents.

I think that our correct process should not be to suddenly switch to a new model on the basis of really a very short discussion, but instead, to work through our model, working through the comments that have been put in the public comment that we've received against our model, including the board's comments, so as to establish which features of our model might have elements that have raised concerns, and what the capability is to adjust those features of the model to accommodate as many of those concerns as possible so as to build consensus.

Simply -- the mere fact that the board has proposed an alternative I don't think causes us to simply abandon our

proposal in the way that you described and adopt a new reference model at this moment.

MATHIEU WEILL:

Thank you, Malcolm. Mathieu Weill speaking.

I think that we need to remind ourselves that what matters is the requirements first. We are not married to any implementation model and we should not be. Requirements first.

And what's -- that's why I think our proposal, after a second public comment, has drawn some feedback on -- and concerns about the member approach, which was one aspect of our proposal. Only one aspect. And this feedback is not only from the board.

So our analysis shows there are wider concerns than just the board, and we've --

>> ASO.

MATHIEU WEILL:

ASO, for instance. I mean, some of the -- not ASO, but some in the numbering community have expressed concerns, some in the technical community have expressed concerns, ALAC has expressed concerns. There's significant feedback on the member aspect of our second draft proposal.

That is one of the reasons why we are suggesting to adjust to the column next to it, which has one absolutely extraordinary benefit, based on our work. If you take the slides that we used for the Webinars on our second report, look at them. Imagine

what they would be, how much an adjustment it would be, to go to the column next to it on single designator.

It's basically about changing one letter or one word in the whole 25 set of slides that describes the requirements of our work.

So I don't think it's -- it's getting away from our second report at all. It's adjusting one aspect.

And one other aspect. Because it's so close, except for some corner enforcement cases in terms of enforceability, it's going to be easy to shift back if at the end of our work we say, "Well, we're having a problem with separation," for instance, "and only the member can solve it, so since we are not meeting the requirement, we need to shift back."

So that's the approach we're suggesting to have because we're hearing some concern and because it's very close, so it enables us to keep 95% of our work achieved so far intact.

THOMAS RICKERT: Thanks very much. Tijani?

TIJANI BEN JEMAA: Thank you very much. I will not repeat what Mathieu said, but I would like to remind that in our first report, we proposed the full membership model and people didn't tell us, "Go to single membership model," and yet we get there. We choose the single membership model.

This means that if people didn't tell us to change, we don't have to change. We did. Thank you.

THOMAS RICKERT: Thanks, Tijani. And the queue is closed after Jordan.

Next is Roelof.

ROELOF MEIJER: Okay. I'll be brief.

I'm not sure but I don't think that we specifically asked the community if they feel that each and every power, as such, should be legally enforceable.

I think most of the consensus we got was on the powers and on the principle of enforceability, and I think that all the models give that, but the difference, I think, is that one model gives us enforceability of each and every power separately, and the sole designator model gives us enforceability on the most important one, which is the nuclear option, so to speak, but through that, we can enforce the other ones.

THOMAS RICKERT: Thanks very much. Next is Jonathan. And can you please state your name and affiliation before speaking.

JONATHAN ROBINSON: Hi. It's Jonathan Robinson. I guess GNSO affiliation. Also co-chair of the CWG, as many of you all know.

I guess -- I'm not going to speak to the detail. I've got a reasonable grasp of many of these issues. I mean, I can feel where the lawyers are shifting, where some of you -- but it feels like -- I guess just my sense is that you're at a moment here where you can see something and the chairs are delicately trying to say, "Look, can we -- is there something we can grab hold of?"

And my feeling is that it's very, very challenging because you can sense around the room there are some people who have got some very, very strong positions and some well thought out and firmly held positions. I mean, I'm sure Malcolm's going to come with one of those after me. But it just feels you're at a moment here where you can either grab something and start to move towards something or not.

So that's all. I'm not making a firm position on one or more of the models or, in fact, on the details behind them, but I just feel in the room now you've got an opportunity to start to grab something, and so I'd just encourage you to do so. Thanks.

THOMAS RICKERT:

Thanks for this innuendo which I think has been very clear. Thanks very much.

Next is Malcolm.

MALCOLM HUTTY:

Thank you. And thank you for being patient to hear from me again.

I strongly support -- sympathize and support the comments that Mathieu made about this is not being wedded to a particular model; it's about ensuring that it provides the solution that we need and satisfies the requirements that we have.

But as a matter of process, we have gone through this over many months, and we had decided that we believed that the single member model was required in order to satisfy some of those key requirements and that we had considered and rejected the single designator model as achieving that.

Now, that's not to say that we can't go back on that decision. That's not to say that we shouldn't reanalyze it. But to simply launch now to say that we will assume that the single designator model does satisfy these and it is now up to those that think that the single member model is needed, to go back and reprove those many months' worth of discussions I think is an abuse of the process.

It is more proper process to work through the reference model that we have identified at this time and to identify what are the things that need to be improved about it. And if it then, in the course of that discussion, shows that actually the things that are done cannot -- that some things cannot be solved with the single member model and must be done by the single designator model, and that the -- and that that can then be shown to satisfy those other core things, then we should switch.

But to start from a new baseline here I think prejudices the discussion that we're going to have over the coming week in a way that does not show fair respect to the many months of work that we have put into this and to those that have engaged in the public comments in good faith on the basis of the baseline that we had previously put.

THOMAS RICKERT:

Thanks, Malcolm.

And I have to say that sometimes in these discussions, we have -- just have to acknowledge that we can't agree on every aspect, but I think I would like to push back a little bit on the notion that the volunteer time spent on working on the model was wasted. We wouldn't be here if we didn't have all that thorough work over the months.

And to be -- to be very clear, I think what we've envisaged -- and I think Tijani will support this -- there was a lot of confusion surrounding the notion of membership. There was a confusion - - a lot of confusion surrounding the notion of statutory powers and derivative lawsuits that could be exercised by members. And even if we can smooth out a lot of the minor concerns, it is our perspective that we will not be able to entirely remove concerns, or at least doubts, about potentially destabilizing the organization if we stick to the membership model.

And I think if we want to be persuasive at the global level, if we want to have a model that can easily be explained and easily be understood, it's potentially far easier to say we have a community that is a designator that interacts with the -- with the ICANN board, and that can remove it as it can -- as a people can replace the government if they're not happy with what the government does.

That's far simpler in terms of explaining. And you will remember that in L.A., there was no opposition to agreeing that simplicity of the proposal is a key factor in what we're doing.

We need to get everyone on our side.

And so while I appreciate your point, I think it -- we are following process because we made very clear that after the closure of the public comment period, we would look at concerns and try to remove concerns.

So again, I don't see this as changing models. I see this as taking our model, our ideas, to the next level by refining them.

And, again, I think the -- the exercise of looking at the visualization of the second report and just looking at that

through the lens of a designator model will clearly show that we're not changing a lot in terms of what we've achieved so far.

So George hasn't spoken so we're going to hear Jordan, but after that, we really need to close and take stock.

Roelof, Jordan, then George. And Sebastien. Sorry.

>> (Off microphone.)

THOMAS RICKERT: What's that?

>> (Off microphone.)

THOMAS RICKERT: Then Jordan.

JORDAN CARTER: I think Roelof was an old hand so -- I wouldn't swear -- swear to it.

THOMAS RICKERT: Yeah.

JORDAN CARTER: But I -- I completely disagree with Thomas that membership would be destabilizing ICANN, so let me just put that on the table. I think that's a nonsensical argument. I totally disagree

with it. I will never agree with it. It doesn't stand up. So I wish that you hadn't said that.

THOMAS RICKERT: I -- let me just be very clear. I said that we won't be able to remove doubt.

JORDAN CARTER: Right.

THOMAS RICKERT: I did not say that I share the sentiment. I read all the legal memos, I have a personal opinion on that, but I think we need to make sure that we move forward.

JORDAN CARTER: Thank you for clarifying that.

The second point I'd make is that once again, my interpretation of why we got to member was in the first draft report when we were looking at each SO and AC being an unincorporated association and being able to exercise the powers, we said, "Well, if you're going to do that, if you're going to go to the trouble of making these UAs, there's no reason not to go to the membership option because it just goes -- you know, it's more complete, if you like, it's more familiar."

And as we -- as we -- that created problems, as we know. That's why we went from multiple members to the single member in the second draft proposal.

So I think -- and in that, the question is a kind of pros and cons thing that we need to look through, and maybe that's what the -- the small group is going to focus on.

Because there are some up sides to the designator model and there are some up sides to the member model, and we need to understand them both.

You know, we -- I would like to see some more -- you know, this two-minute intervention thing is so unhelpful in getting a real understanding going, but I would like to see more discussion, more comprehensive discussion, about the enforceability of all of those powers under those models.

You know, because we have to answer the points that Avri made.

But I don't think we're breaching the process if we end that.

The last point I'll close on is if we do stick with the single member model, we -- if we can get consensus for it based on the requirements, we'll have a cleaner and quicker run to finalizing and closing this work out.

If we change the model, there are implications in terms of the consultation side of stuff and that will slow us down.

THOMAS RICKERT: George?

GEORGE SADOWSKY: Thank you. A couple of quick points.

First of all, I really appreciate the comments regarding the importance of the goals and the principles.

If we can -- if we can establish what those are and meet them, that's the important thing.

The means will -- of achieving them will fall out.

And I think the comment on simplicity was also important. The simpler this proposal, the more chance it has of being accepted and understood after its acceptance. Thank you.

THOMAS RICKERT: Thanks very much, George, and thanks for being brief.

Sebastien?

SEBASTIEN BACHOLLET: Yeah. I would like very much that we try to keep the name of the proposal to the single designator and not to change the wording because sometime it's "community designator," sometime it's something else, and I really think that as I don't consider that it's a concentration of power but it's a way to be all together in one place, that's where -- historically where we move, we move to a single, and the fact it was member. Now we are going to the next step with "single designator." We are just going one step further.

But keep the "single" as a very important word in this description. Thank you.

THOMAS RICKERT: Thanks very much, Sebastien.

I guess that's a good point. We came up with the notion of "community designator" in order to not have any -- previously encumbered term, right? But the idea -- or that's what we're

hearing -- is that if we want to avoid concentration of power, if we want to be fully inclusive, then it's good to see the community as holding the power and not a subset of the community being the designators, and I guess that's the -- that's maybe the part that we should still build on from the previous proposal.

So thanks for pointing that out and that's certainly a point that we can -- that we can pick up.

Steve, and after that, I'm really going to close the queue. We're two minutes over time.

STEVE DelBIANCO:

Thanks, Thomas. Steve DelBianco with the CSG.

Jordan just talked about the notion of achieving consensus within the CCWG with respect to the columns. And please understand, this is the enforcement model of the column.

The discussion we opened today with was Jonathan Zuck and all of us talking about the decision-making method that the community would use. Community forum, consultation, pre-call, getting rid of the notion of voting and waiting.

All of that would apply, no matter which column we picked, okay? So that was the idea of teeing that up.

So if -- when Jordan asks the question of trying to get consensus on enforcement, if what you had in your head was, "I have a concern about voting" or "I have a concern about weights," "I have a concern about voting versus consensus" or, as Bruce Tonkin indicated, the representativeness of the ACs and SOs and capture, all of those concerns we need to address in the

community decision-making process, those concerns actually don't have relevance to our selection of our enforcement model.

So I do think it was constructive -- we tried to tee it up that way this morning -- for us to have a sub-team working on the decision-making process that we have, and then this selection only affects the escalation, the ultimate escalation of having to enforce a power.

So we can separate those decisions, and I think by breaking this up it's more easy for us to achieve consensus on enforcement versus consensus on the decision-making model.

So I'm just trying to achieve some clarity that we have two separate parallel tracks of sub-teams and their work will meet at the end in the selection of what our enforcement model is.

THOMAS RICKERT:

Thanks very much, Steve.

Now it's time to take stock and we've heard some criticism, we've heard some -- about some questions and concerns, but we also need to move forward and try to work on fleshing out more details.

So with your agreement, I would like to task or have us task a sub-team for tomorrow to look in more depth at the single designator model and specifically speak to the issue of IRP and separability, because I think those were the core concerns with the model, and then revisit this path to see whether the requirements that we've established are met.

But I think that we really need to do some more deep-dive analysis on that and task the sub-team, with legal help, to flesh that out more.

MATHIEU WEILL:

Can I just say that what we need the sub-teams to come up with is very -- a lot of clarity on the processes that would be taken on, so that we identify the various steps -- the escalation, the staircase, the three steps of -- the three "E's" that Thomas highlighted, and then see whether we're comfortable with the way it's looking.

And we've definitely identified, thanks to this discussion, the core areas of concern that we need to prioritize in terms of a specification.

THOMAS RICKERT:

And again, I think it's crucial for us to really give a model a chance. Let's jointly try to make it work, and if we come to the conclusion that it doesn't, then we need to revisit, as we've previously done. But let's see this as part of the evolutionary process.

So with that, I --

JORDAN CARTER:

Sorry. Can I -- so in this subgroup, which I'm intending to be part of, I want to make it really clear that it has to look at the merits.

What I hear you tasking us with is looking at the merits of the single designator and single member lines on the enforceability and seeing if it meets our requirements.

THOMAS RICKERT: Well, I would go even further and say let's take the single designator model, see what it can deliver on our requirements and whether we can remove the concerns that have been expressed by this group with legal assistance.

>> Okay. But in the absence of that analysis and discussion of it, I just want to be clear some people are saying this to me, we're not taking the single member model off the table. We're analyzing the requirements against the single designator model.

THOMAS RICKERT: What I said is let's give this model a chance by looking at it more closely. We're not taking a decision today but we're authorizing ourselves to look at that. Because it actually could be a way forward removing many concerns, yet meeting our requirements, and have something that meets our overarching requirements of not destabilizing, avoiding concentration of power, avoiding capture, and, you know, the things that we've -- we've spoken about earlier. But we will work more on refining the terms of reference for the sub-teams and also where they're going to meet and the logistics about that, so you'll hear more about that through the day. And while staff can please bring up the slides for the next agenda item and Jordan is going to prepare -- I think George's hand was an old hand or -- that's an old hand. So Kavouss and Tijani. Yes, Kavouss and then Tijani. And if I could ask you both to keep it brief.

KAVOUSS ARASTEH: Thomas, we are in a very critical moment. It is dangerous to concentrate or push or opt for any particular model at this stage.

We should save one, the transition process, which ICG is working for that, and among that we have heard the concerns of the two operational communities, numbers and parameters, that they are totally frustrated. That they are waiting for 15th of January and they had no problem with any model at all and everything will be postponed if we do not decide properly. Second, we should say what we have done. Instead of concentrating on the model, we should concentrate on the actions, powers that need to be implemented in order to have the accountability required for transition and accountability that we have worked and put or create a step at this stage, should we go ahead with that one and having the provision to review of the situation, including the governance. So please, at this stage, kindly do not conclude that we push for designator model. Thank you.

THOMAS RICKERT: Thanks. Tijani.

TIJANI BEN JAMAA: Thank you very much. I would like very much to be on this subgroup tomorrow but unfortunately perhaps my duty as an ALAC member will prevent me to be there. That's why I would like to say and to stress that I have strong support for the sole designator model. We already talk about that with a lot of you. But I don't know how to -- how to split ourselves between two meeting rooms. Thank you.

THOMAS RICKERT: In which case I'd like to ask you to send emails with concerns or questions that you have so that the sub-team can work on that. Again, we're not making a decision today. This is just to agree

on a way forward. Are we good to go for the next agenda item? Which is going to be the -- no, not that one. We're going to talk about the board removal, and over to you, Jordan.

JORDAN CARTER: This is going on to the edge of rapporteur abuse but anyway, hi, everyone. Jordan Carter for -- that's Jordan rapporteur abuse. Let's be specific.

>> (Off microphone).

JORDAN CARTER: I'm sure it is. So in the comment document in terms of removing individual directors I think is the one we're looking at rather than the entire board, unless I'm deeply confused, or are you unsynced? Oh, okay. So what's on the screen in the Adobe room is right and what's on the screen in the room room is wrong.

So this is going to be very brief on my part. Once I find it in my own document. The removal of individual directors is on page -- whatever page that is. Page 8 of the document. And the key public comments here are issues that we canvased at some length in Los Angeles. So you'll -- many of you will be already familiar with them. But it's important to kind of restate the feedback that we got. People are in favor of the basic premise. The largest block of comments voiced unqualified support for the proposal as it was presented, that appointing SOs and ACs could remove the directors they appointed. There was consensus in there and in the Los Angeles meeting about documenting rationale for removal. So if you were going to

remove the director, you need to say why. You don't just sort of go, we're sick of you -- well, actually that's a why, isn't it? You don't just go sayonara. So those are consensus areas.

In terms of clarification or refinement, there was some comments in favor of criteria for the removal of directors as Work Stream 1 items. And there were some -- some other detailed points that are listed there.

In terms of areas of concern and divergence, again, you know, is it the SO and AC that appointed them that makes the decision or is it the entire community? The way that we reconciled that in the second draft proposal was to say yes, it is the appointor that removes but there is this mandatory dialogue step in the community forum which is really important and we've added on to that layer the need to present a reason. So not cause. When you hear cause or when I hear cause, I hear a list of criteria that's set out in the bylaws and if you can't objectively justify your decision against those criteria, then the person you're trying to fire can take you to court. That's an employment-style relationship, in my view. That's not what's being proposed here. Not what's being proposed here. It's providing a logic, an explanation, a rationale. And a director confronted with that would either go, I'm not going to be dragged through a discussion on that in the community forum, I'm resigning, see you later, or they would. It would be a very public process of discussion.

So that cause thing is an important discussion, standards of behavior and so on. And the -- another commenter noted the idea that there maybe needs to be a cap on the number of people who could be dismissed, otherwise you referred into the recall the whole board thing. That's something that Work Party

I haven't analyzed that would need to be treated carefully if there was an ascending threshold that applied once a certain number of directors had been removed. You are creating an unfortunate incentive on people who have concerns with their directors to be the first remover because it might get harder later. And I'm not sure that that would be anything other than a destabilizing instinct. So that would need to be thought through quite carefully.

And so the options that WP1 presented back were that there should be an explanation of these questions that I've raised. And I'll hand it back to Thomas.

THOMAS RICKERT:

And we would like to open it up for questions. So Jordan, should we maybe go through -- ask for confirmation on the various options?

JORDAN CARTER:

In terms of the options, do you mean the sort of options for the CCWG to discuss that we put at the bottom of our paper? Right, we could do that just as a way to spare discussion. That's on the bottom of page 9. And if you were to scroll to that on the screen, I think you should be able to see both of those options on the screen. I mean, the two and principle discussions are ones that we've had more than once, and we've resolved the same way more than once, which is that it's the appointing body that removes. There's a very clear weight of sentiment behind that, and we've decided that twice. And the other is the question of objective standards that have to be met versus explanation. There's been a clear body of support and twice we've decided to have it as an explanation but not list of causes. So these options

kind of place that in front of you again. The other one that's come up in the discussion is this idea, do you have a cap on the numbers who could be removed. So I guess what I'm signaling is that having discussed this a number of times, the lack of hands going up in the room might signal that other people are also slightly exhausted by this discussion.

THOMAS RICKERT: Chris.

CHRIS DISSPAIN: Well, I will just plus one to Jordan about being slightly exhausted. I just wanted to talk briefly about the concept of the number. I think if I remember correctly in the Board's comments we suggested that if you used -- if you -- if there was going to be a different standard for the removal of an individual director or -- then there is for the removal of the board, which is as it should be, leaving aside what those standards might be, then you should probably set a level at which the removal of the individual directors is tantamount to the removal of the whole board. Otherwise you could find yourself in a situation where you were removing people at a lower level of requirement than you required for the whole board.

Now, Jordan, forgive me if I'm -- if I'm asking -- does this address the nominating committee removal or not?

JORDAN CARTER: From my memory, and is Mike Chartier here in the room? Hi, Mike. Nice to see you. Mike did the direct analysis of the comments that led to this part of the paper. So I think I might actually ask him to answer that question, if that's all right, or if

you want to come up to the front table. Either way. He's asking for a roaming mic.

CHRIS DISSPAIN: Just to be clear, my question -- that's a split question. So I'm asking, does the individual director removal that you've just talked about deal with how the nominating committee would do that or are you only talking about in respect to the SOs and ACs?

MIKE CHARTIER: Only with respect to the SOs and ACs.

CHRIS DISSPAIN: Excellent.

JORDAN CARTER: So to supplement that, we didn't get many comments and as far as I recall that dealt with the NomCom process that we set out in the proposal.

CHRIS DISSPAIN: Understood. So -- thank you. So if it's all right, that brings me back to my point. So I would argue that if you were to remove all of the elected directors from the board through a process of going through the individual removal, that is probably a point at which you should be saying -- we should be saying well actually, that is in effect board removal because there are distinctions made in the bylaws between the appointees from the nominating community and the appointees from the board. There are distinctions made about there always having to be more people from the nominating committee and so on. Given

that those distinctions are already made, I think we should talk about whether there is a tipping point at which you say removing that number of board members individually through the individual process is tantamount to the removal of the whole board. I don't make any comment about what that number is, but I think there's a logical breakpoint in the sense that you've got your nominating committee and your elected directors.

THOMAS RICKERT: Mathieu, would you like to respond?

MATHIEU WEILL: I'm just wanting -- it's a clarifying question. Is -- what you're saying is that you would see an escalation whereby after a certain number -- if a certain number of removals are undertaken in a certain period of time then there would be a tipping point upon which the next one would be -- would have to be exercised with the extra caution or extra thresholds that would be required for the board recall and then it would trigger actually the board recall, is that what you are saying?

CHRIS DISSPAIN: I think I'm saying that -- in essence I think what I'm saying is look, if the ccNSO removes me and Mike and then six months later the ALAC removes Rinalia or whatever, that's fine. I'm not talking about that. If there is in effect a concerted SO and AC effort using the single board removal criteria to remove what amounts to half of the board, then I think that's problematic and that we should look at that as being --

MATHIEU WEILL: Just to make sure, is your -- are you suggesting that a limit of individual board removal is set or are you suggesting that this concerted effort be the board recall process? You can see both ways.

CHRIS DISSPAIN: Yes, I agree. So I think we need to talk about that. But I'm saying it's a subject of discussion we need to discuss.

MATHIEU WEILL: What's your personal view?

CHRIS DISSPAIN: I think my personal view is that you set -- I think my personal view is you set a number. I don't think you can say because we've done six, now seven and eight have to be a higher threshold. I don't think that works. I think you actually say, if there is a -- if more than -- these are just numbers I'm making up. So we have how many electors? We have four, right? We have ASO, ccNSO, GNSO, and ALAC. If you said, if three of those -- again, I'm making this up -- if three of those processed to remove their individual directors at the same time, that would be deemed to be X. You could say four of them. Then that's, I think, a possible solution. But I'm not suggesting it would ever happen. I just think we do need to cover it because removal by stealth is a challenge.

THOMAS RICKERT: Jordan, you wanted to respond to that as well?

JORDAN CARTER: It was just to sort of suggest one way to operationalize that in the scheme of our second draft proposal would be to say that if there were three active petitions that happened at the same time to remove three directors, that that would then be deemed to be a remove the whole board petition instead. But we would need to think all that through.

THOMAS RICKERT: Yes, but I guess we need to think it through at some point in the very near future. And also let's remember that we have board members being seated in intervals. So I think maybe we can just settle on saying no more than three in a year. I'm just throwing out an idea. I think we need something concrete for the group to say yes or no to. Saying, you know, we need to discuss this at some point in the future I think will take us nowhere. So if somebody is brave enough to come up with a concrete suggestion as we discuss, I think it would be great. Maybe we could take stock of that.

Let's move on with the queue. And I'd like to close it after Greg and see whether we can add more people to the queue in terms of time, when we come to Greg. Christopher.

CHRISTOPHER WILKINSON: Thank you. Good morning, everybody. Christopher Wilkinson, for the record. Just to mention that my comments on the nominee committee appointees removal have been made there on the record and Jordan did not refer to them. For the rest I defer to Alan and Chris Disspain.

THOMAS RICKERT: Thanks. Tijani.

TIJANI BEN JAMAA: Thank you very much. You know very well my position regarding the removal of individual board members by the appointor -- the appointing bodies. I will -- I oppose strongly from the beginning, and I still opposed to that. But we -- we found a way to make it lighter, to make it better for me with the forum. But I still find it is -- it is better that the community remove the individual board members. I will not repeat the reasons that I gave, but I can tell you that in our second report we proposed the sole -- the sole membership and this model, it is the right of this sole member and only the right of the sole member to remove the directors. So -- but we found acrobatic -- excuse me, acrobatic ways to make in the bylaw the sole member obliged to implement the decision of the appointing body. I think that I am not comfortable with that and I prefer that really the sole member, but now if we go to the sole designator, the sole designator will be the one who will remove the board members. I will not repeat the reasons. If you want me to repeat them, I am ready to repeat them. Thank you.

THOMAS RICKERT: I think we -- we still have fresh memory on your thoughts on this. But thanks for your contribution. Next is Alan.

ALAN GREENBERG: Thank you. Just in response to a couple of the previous comments. There was a proposal in the current -- the current proposal does talk about removing NomCom appointees by the community and it is correct, we got very few negative comments on that. So if we have a process, let's not change just for the -- for the -- for the hell of it. The ALAC was the one that commented on removing too many directors. Certainly we don't want to remove one by one and end up having only one director

or zero left with the exception of the CEO. But I'll point out, when we talk about this, let's remember there's a difference between removing directors -- a director rather that has been removed and a director that has been removed and already replaced.

Just because we remove three and replace them two months later, that shouldn't -- the three should not count against the count. The real concern is a Board that is too small where we have essentially disenfranchised the Board, and I think we need to be very careful how we do that, and that we do need some sort of limit to make sure that we haven't removed the whole Board. Exactly the mechanism we need -- that we need to do that with needs to be discussed in detail, and it's something we haven't focused on yet.

Thank you.

THOMAS RICKERT: Thanks, Alan.

Kavouss.

KAVOUSS ARASTEH: Yes, the reason I was not in favor of the removal of individual board member by their designating community or constituency was this sequential actions that they remove the Board one after the other may happen because the threshold is lower than removing the entire board, and sometimes we may reach a point that we totally destabilizing the action of the Board and we do not recalling the whole board because we do it one by one. Therefore, all of those procedures for the removal of the entire

Board is not in place, and this de-stability and paralyzing the situation will happen. We have to put some element.

The issue of removal works individually separately, but if you put the whole things together and having a picture of that, we see that there are many deficiencies to that if we do not put some element, some threshold, and some limitation, a matter of time, so on, and so forth.

So currently, that is the difficulty. That is what I suggested that if that is the case, it go to the community, that community be aware of the consequence of this sequential removal of the Board one after the other.

So we need to do something if you want to have this removal of individual board member. Currently, doesn't work.

Thank you.

THOMAS RICKERT: Thanks very much, Kavouss.

Next in queue is Cherine.

CHERINE CHALABY: I want to go back to the previous session when we talked about the community consensus decision under a single-membership model. And Mathieu said we will have a discussion here; you are open about the two options.

You talk a lot about avoiding concentration of power. And I would say that removing a single board member is probably one of the most powerful decision the community is going to have. And if you leave that power concentrated in one S.O. and A.C.,

that is a concentration of power which I think will have a detrimental effect on Board behavior and what's happening on the Board. This is my personal view, and I will repeat only very -- the three things I think will happen.

One is you will end up with, over time, a dysfunctional board because there will be two classes of board members: Those appointed by the Nominating Committee, and the Nominating Committee is representative of all of the SOs and ACs, and, therefore, when they decide to remove someone, it's a representation, a consensus of the community, more or less, to remove a Nominating Committee member, whereas the others, it is not. So they, the Nominating Committee members, will have more freedom to act in the collective interest of all stakeholders rather than in the single interest of a single stakeholder.

Secondly, the Board will become much more a representative board, where Board deliberation and decision risk being driven to a large extent by subjective goals and personal compromise. So I really urge you to involve the community in the removal of an individual board director to avoid concentration of power.

Thank you.

>>

Thank you very much, Cherine. That's exactly the kind of thorough view that is needed at this point to help us move forward. So I think Cherine's point deserves to be considered completely, and if -- one of the discussions we need to have is whether we move forward with such an approach or stay with the current second report approach. Obviously there have been some concerns raised in this group before, and even from you,

Cherine, and so that's something that we need to have the discussion right now. And I suggest we move back to the queue about it. And I think the next is -- is Sebastien next in the line? Sebastien?

THOMAS RICKERT: Yes, Sebastien.

SEBASTIEN BACHOLLET: Thank you.

Thomas, you asked for proposal. I just want to remind you that both in the comments of the first draft and on my minority report on the second draft, I made a proposal how to put together the removal and the spill of the whole board, and how will solve also the question of how to replace and how to still have a board functioning.

I just want to remind you that each year, we may change five -- up to five member of the board, the community as a whole, and that's why I made the proposal to add seven possibility for one single year.

I will not repeat my proposal, but I just think that it seems to be that we need to find a workable solution and not to completely destroy the Board. Even if we talk about the nuclear option, first I don't like the nuclear bomb and I don't think ICANN deserve to have this type of thing doing. That's not to say it's not a good stick. It will still be a good stick.

Thank you.

THOMAS RICKERT: Thanks.

Greg.

GREG SHATAN: Thank you. Greg Shatan, for the record.

Responding to a couple of things that have been said. First, I think with regard to the concern about concentrating power in having an S.O. or A.C. remove the director which it appointed, we have the same concentration of power when it appoints that director in the first place and when reelect them or decide to not reelect them. It's really just a question of timing. So I think that's a bit of a red herring because their selection is still in the hands of that particular A.C. and S.O. It's just a matter of when they exercise it, if they exercise it at an extraordinary time or at the ordinary time.

And I think with regard to the issue about kind of serially spilling the board or self spilling the board, I'm concerned we're getting into edge cases here. I'm not saying it's impossible but I think we need to get back to first principles. This is about accountability. There really needs to be, I think, an issue where this would happen. And I think we're kind of mistrusting the community if we think that this is at all likely to happen. I'm not saying we shouldn't spend any time on it, but I don't think it's a key factor in choosing our methodology. And I think we get too stuck on edge cases, and this is one of them.

Thank you.

THOMAS RICKERT: Thanks very much, Greg.

Next in line is Athina.

ATHINA FRAGKOULI: Yes, thank you very much.

I agree with Greg's point. I express it already in the chatting room.

I'm going to speak as an ASO representative, and we believe that the power to remove individual board members should be a decision of the individual SOs and ACs and I'm going to bring an example here is the ASO example. The ASO selects their board members pretty much based on their expertise, which is a very specific expertise. It has to do with numbers. The community has an expertise, of course, but it's not so much for numbers. It's for names. And we don't see how the community can judge on the expertise of an ASO board member.

That's our point. Thank you very much.

THOMAS RICKERT: Thanks, Athina. And just for you to know that we are cognizant that we've been in this room for three hours now. Let's try to take this a little bit further, to have fleshed out the areas that the sub-team tomorrow should be looking into more.

So I think we can potentially find a solution for the open issues. Let's try to have a finite list, terms of reference for the sub-team for its deliberations tomorrow.

Next one is Mike.

MIKE CHARTIER: Thanks. I just wanted to point out that the comments, as all the comments, were received in the context of the single-member model where you had discrete or nuanced enforceable powers as Thomas said. And if we're going to be looking at the single designator model, the ability to remove individual directors retains one of the few areas of nuanced power. So that's just something to keep in mind for the discussions tomorrow, to think about it also in the context of a single-designator model where you're left with the single nuclear option of recalling board members.

Thank you.

THOMAS RICKERT: Thanks very much.

Jordan.

JORDAN CARTER: Thanks. Jordan here. Just not speaking as a rapporteur or anything.

I'm interested in Cherine's point about the concentration of power. At the moment, a key part of the distributed power in the ICANN community is that different groups designate directors. So each of the three SOs can appoint directors, ALAC can appoint a director, the NomCom appoints a director, so five appointing parties, if you like.

I think it would be a concentration of power to compress the removal power into one body, into one grouping, into the whole community. I actually think we preserve the kind of individual choices that Athina just talked about for the ASO, for the focus

that the ccNSO wants to bring, by allowing the removal to be parallel, to be consistent with the appointment.

In other words, I think logically speaking, if you say that the whole community should be making decisions about who directors are and about who they aren't, you should also take that position with respect to who they are.

So I don't support abolishing the right of SOs and ALAC to appoint their directors, and I join the strong support that there is in the public comments to suggest that the removal process should be parallel with that.

THOMAS RICKERT: Thanks, Jordan.

Mathieu.

MATHIEU WEILL: Thank you, Thomas. Mathieu Weill speaking.

I think what we have here is -- is two different requirements. One is from the A.C. and SOs, the requirement that they are -- they have the ability to select their own members and keep them in place, and one is that the board members act be in the interest of the community as a whole. And we're trying to reconcile them.

And actually, in the escalation process we discussed earlier, we have several steps. So I would like to suggest that we can probably combine both concerns or requirements by actually using different steps and picking an approach for one step and another approach for the second step.

Let me explain. That could be that -- the two steps are petition and decision, and in the middle there's the discussion. It could be that a petition, I think that's been suggested in the comments, could be to remove -- let me remove Chris Disspain, for the sake of the argument.

[Laughter]

It's -- I don't know.

CHRIS DISSPAIN: Removing me for the sake of the argument is not a good enough reason. You're going to find another reason.

[Laughter]

>> Chris, you're just afraid we could have full consensus on that; right?

MATHIEU WEILL: So it could be -- we could acknowledge Athina's concern that ASO or others have the ability to pick who is on this, if, for instance, the petition right to remove Chris Disspain as ccNSO appointee would be reserved to the ccNSO. And then the decision would be a community decision. Or we could do the other way around. We could require that the petition comes from another S.O. or A.C., but the decision is reserved for the appointing body. I think there's more -- probably more -- it's easier to understand with the models we're discussing if it's the first -- the former than the latter. But I think we can probably accommodate both concerns if we play with these two parameters and probably look whether that would be practical

in terms of process and whether that would give rise to risks of capture or concerns, specific be concerns.

So that was my suggestion forward.

THOMAS RICKERT: Thanks very much.

Tijani.

TIJANI BEN JEMAA: Thank you very much. I understand very well the concern of Athina, and I think that any board member is appointed to the Board not to -- especially for this appointed body but for the whole community.

If this body make -- made a mistake about his competence, if you want, his skill, means that, for example, this Board -- convinced the Board to take a decision which is not right regarding the security and stability. So -- or, for example -- no. Concerning the numbers. So the ASO may ask for his removal. And in any case, anyone can ask. The petition can be done by anyone. But the whole community will see and will listen to the people who asked for the removal of the board member, and the decision will be of the community why? Because if it is really a problem of a technical problem, they will follow and they will accept it.

But it is only for a narrow interest of this body. The community will not accept it.

Coming back to the concentration and distribution of the power, if the community take the decision, the decision would be distributed among the whole community. It will not be

concentrated in one part of the community. It will be distributed on the whole community. So I don't think it's concentration of power. At the contrary, it's a distribution of the fair, a fair distribution of the power.

Thank you.

THOMAS RICKERT: Thanks very much, Tijani. And I'd like to close the queue after Roelof.

Let's here Cherine, Kavouss, and then Roelof.

CHERINE CHALABY: So I kind of -- I agree with Mathieu. Mathieu, your proposal to use the escalation process for the removal of board members is something that I would feel a lot more comfortable with and would make a lot of sense. And also, in a way, you are saying what's good for the Board is good for the community.

So the escalation process is an accountability measure, so that should apply to individual SOs and ACs making such a critical decision for the removal of individual board member. And that is a fair and balanced accountability, in my view.

So I support what you just said, and I hope people will work around that and try and find a way forward.

Thank you.

THOMAS RICKERT: Thanks, Cherine.

Kavouss.

KAVOUSS ARASTEH: Yes. I also agree with Mathieu. Both versions is possible. Perhaps we need to reflect a little bit on that. More logically, coming from S.O., supported by community, it's more logical but inverse also. It works.

The only thing we have to think is what is the legal process for each of these which is more stronger. So we have to see which one is more stronger from the legal point of view as far as the law you of this corporation in California state is concerned. But both is possible.

Thank you.

THOMAS RICKERT: Thanks. Mike, that was an old hand; right? But now that I mention your name, are you okay with taking care of the sub-team tomorrow for the breakout?

Thumbs up. Thank you. He's nodding for the remote participants.

Roelof.

ROELOF MEIJER: Thank you, Thomas. Roelof Meijer for the record.

Personally, I have a preference for individual board member removal by the community as I feel -- it's my opinion, at least, that every board member should serve the community and not his or her constituency. And I think by introducing the notion that it's the constituency that removes the board member it elected, that we bring in this notion that the board member is

actually serving and is responsible to the constituency that appointed him or elected him or her.

I have some experience in this matter with -- within my own organization because we have one advisory board member that is nominated, not appointed, nominated by our council of registrars. And there have been occasions when, after some time, they were not very happy with that particular board member because he or she was actually serving the interest of the organization and the wider community and was not, in the opinion of the registrars, not enough defending the specific interest of the registrars only.

So there is this risk. I don't think it's very big. I think we can manage it, but it's -- I just want to put this in, that there is a risk that we communicate unwillingly that board members are responsible to their constituency only and not to the community, and I think it should be a community process.

THOMAS RICKERT:

Thanks very much, Roelof.

So I think that the main arguments have been exchanged, so we even heard some repetition of arguments which is why I think we have good chances of closing early for lunch. I think you've all deserved that. But let's just try to agree on some terms of reference for the sub-team to work on tomorrow.

So I think the most important point is that the sub-team should be looking at how to operationalize this community power and not question it entirely. I think there is no discussion about whether we need it or not. We just need to make it work, so that there's -- there are as little concerns as possible.

The sub-team should also look at the question of who can petition, who -- whether there should be a deliberation phase and in what shape or form the deliberation or discussion phase should take place, and then the question is who makes the decision, ultimately, on the removal.

We should be talking about the NomCom appointees, what treatment shall be given to them, and lastly, whether there should be any threshold in terms of numbers where individual board member removal would actually turn into a total board recall and what the limits on that should be, as remote -- as Greg rightly pointed out, as remote as the scenario might be in practice.

But, you know, if there are concerns, if we can just put in a sentence or two clarifying that there is a ceiling to that or that a different process is needed if you reach a certain threshold, why not put it in there and remove that concern?

So unless there are -- there is disagreement with this approach, I would suggest that we break early for lunch. We're going to reconvene at 13 hours. So we have 77 minutes now, and I hope that you're going to use the --

>> (Off microphone.)

THOMAS RICKERT:

Well, you -- I would have some tasks for you if you want to -- those who are -- who are suffering from too much spare time, approach me and I'll find some work for you.

Kavouss, you have raised your hand again.

KAVOUSS ARASTEH: Yes. Not disagreement but comment.

If you say you put threshold, suppose you put threshold from the third and fourth removal, so I as an SO try to give first, to have lower threshold and removal, and then not to be the fourth to have the higher to removal, so we should think of that one, unless your threshold is defined differently. Thank you.

THOMAS RICKERT: Kavouss, I was just making the point that this item should be reflected by the group tomorrow. I was not suggesting that we would need it, but that it should be considered as a piece of homework for the sub-team.

So with that, I think we can say we made decent progress this morning. You know, at least we have some points that we can now try to firm up and have less moving parts, so continue the conversation over the lunch break and we're all looking forward to seeing you again in 75 -- 77 -- 76 minutes now, and let's -- remote participants, we try to be punctual when we reconvene. Thank you so much.

Hello. Hillary, would you like to do some housekeeping announcement? Are you here, Hillary, or Alice, would you like to do it?

HILLARY JETT: Yes, lunch is outside in the foyer.

THOMAS RICKERT: Can we leave things in the room?

HILLARY JETT: Yes.

THOMAS RICKERT: Yes, we can leave things in the room. Hillary, anything else? Ladies and gentlemen, I give you Hillary Jett.

HILLARY JETT: Hi, everybody. Food isn't going to be ready until noon, so even though we get a little bit more spare time, it's still going to be about 10 minutes until food is going to be ready.

Once you get your food, you can either find some -- a high-top table outside to sit at or to stand at or you can bring it back in the room here. We're trying to see if there's another space available, but for right now, that's our options. Okay? Thank you.

THOMAS RICKERT: Thank you very much, Hillary, for making this happen.

[LUNCH]